

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1957

No. 109

TANK TRUCK RENTALS, INC., PETITIONER,

vs.
COMMISSIONER OF INTERNAL REVENUE.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 22, 1957

CERTIORARI GRANTED JUNE 17, 1957

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PETITIONER'S APPENDIX.

RELEVANT DOCKET ENTRIES.

- Oct. 19, 1953. Petition received and filed. Taxpayer notified. Fee paid.
- Oct. 19, 1953. Copy of petition served on General Counsel.
- Oct. 19, 1953. Request for circuit hearing in Phila., Pa. filed by taxpayer. 10 22 53 - Granted.
- Dec. 2, 1953. Answer filed by General Counsel.
- Dec. 9, 1953. Copy of answer served on taxpayer, Phila., Pa.
- Dec. 30, 1954. Hearing set March 14, 1955, Philadelphia, Pa.
- Mar. 28, 1955. Hearing had before Judge Raum on petitioner's oral motion to continue.
- Mar. 28, 1955. Order, motion granted, case continued generally on the Philadelphia calendar, entered.
- Aug. 26, 1955. Hearing set November 28, 1955, Phila., Penn.
- Nov. 29 & 30, 1955. Hearing had before Judge Raum on the merits, Stipulation of Facts and Supplemental Stipulation of Facts, filed at hearing. Briefs due 1/16/56. Respondent's Brief due 2/15/56, Petitioner's Reply Brief 3/6/56.
- Dec. 9, 1955. Transcript of Hearing 11/29/55 filed.
- Dec. 9, 1955. Transcript of Hearing 11/30/55 filed.

Relevant Docket Entries

Jan. 10, 1956. Motion for extension to Feb. 6, 1956 to file brief filed by taxpayer. 1-10-56
Granted.

Feb. 2, 1956. Brief filed by taxpayer. 2-2-56 copy
~~served.~~

Mar. 7, 1956. Respondent's Brief in answer, filed.
3-8-56—Copy served.

May 31, 1956. Findings of Fact and Opinion filed. Judge
Raum. Decision will be entered for the
Respondent. Served 6-4-56.

June 12, 1956. Decision entered. Judge Raum. Div. 11.
Served 6-13-56.

Aug. 29, 1956. Petition for Review by U. S. Court of Ap-
peals for the Third Circuit, filed by
petitioner.

Aug. 30, 1956. Proof of Service filed.

EXCERPTS FROM PETITION.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(a) The Commissioner erred in disallowing as a deduction from gross income and or gross receipts the sum of \$41,060.84 or any part thereof, allegedly representing non-deductible fines paid to the State of Pennsylvania for overloading of trucks using the Pennsylvania highways, and in failing to determine that said sum of \$41,060.84 was deductible from gross income and or gross receipts as ordinary and necessary expenses incurred and paid by petitioner during the taxable year in carrying on its trade or business.

(b) In the alternative, the Commissioner erred in failing to determine that the sum of \$41,060.84 disallowed as a road expense deduction was deductible from gross income and or gross receipts either as:

(1) reasonable compensation incurred and paid by petitioner during the taxable year for personal services actually rendered to petitioner;

STIPULATION OF FACTS.

It is hereby stipulated with respect to the above-entitled proceeding that the following statements may be accepted as facts and that this stipulation shall be without prejudice to the right of either party to introduce other and further evidence at the trial of this case not inconsistent with the facts herein stipulated:

1. The petitioner is a corporation duly organized on January 1, 1945 and existing under the laws of the State of Pennsylvania.

2. The petitioner kept its books and filed its income tax return for the taxable year 1951 on a calendar year basis, and on the accrual method of accounting.

3. The petitioner was during the taxable year 1951 engaged in the business of transporting bulk liquids by motor vehicles under lease or rental agreements with motor carriers holding an operating certificate issued by the Interstate Commerce Commission and/or Public Utility Commissions of the various states hereinafter mentioned in and through which petitioner transported said bulk liquids. Petitioner leased to said certificated carriers the motor vehicles hereinafter described and furnished the driver-operator of same as petitioner's employee.

4. Said lease and rental agreements with the various certificated carriers were in the form substantially the same as the agreement entitled "Coastal Tank Lines, Inc.—Equipment Lease" annexed hereto as Exhibit 1.

5. The motor vehicles used and operated by petitioner in the course of its business during the taxable year and leased as aforesaid consisted solely of truck tractor and semi-trailer combinations. During said taxable year, petitioner owned and operated the following numbers and kinds of truck tractors and semi-trailers:

142 truck tractors, each of which had two axles.

112 semi-trailers, of which 62 had a single axle and 50 had two axles.

The capacity of the tank on the single axle semi-trailers ranged from 4,500 to 5,000 gallons. The capacity of the tank on the two or tandem axle semi-trailers ranged from 4,600 to 5,900 gallons.

6. During the taxable year, petitioner operated its motor vehicles as aforesaid in the following states for the following approximate distances and made the following approximate number of trips:

State	No. of Miles	No. of Trips
Pennsylvania	6,110,798	77,385
Ohio	971,643	5,293
New Jersey	856,973	14,146
Delaware	383,612	2,984
Maryland	314,960	10,712
West Virginia	238,750	3,937
Totals	8,956,738	114,457

7. Prior to and during said taxable year, each of the aforementioned states prescribed by statute the maximum weight for motor vehicles using the public highways of the respective states. During said taxable year, the statutory maximum gross weight for the truck tractor and semi-trailer combination owned, used and operated by petitioner was, for each of the aforesaid states, as follows:

State	Statutory Citation	Maximum Gross Weight
Pennsylvania	75 P.S. § 453(g)	45,000 lbs.
New Jersey	N.J.S.A. § 39.3-84	60,000 lbs.
Ohio	Page's Ohio Gen. Code Anno. § 7246	Statutory formula which results in range from 57,000 to 67,600 lbs.

State	Statutory Citation	Maximum Gross Weight
Delaware	Del. Code Anno. Title 21, Chapter 45, § 4503	48,000 lbs. for single axle trailers; 60,000 lbs. for tandem axle trailers.
West Virginia	1951 Supp. to West Va. Code of 1949 Anno. § 1721 (463)	Statutory formula which results in range from 54,000 to 60,800 lbs.
Maryland	Flach, 1951 Anno. Code of Maryland § 278	Statutory formula which results in gross weight of 65,000 lbs.

8. During the taxable year, petitioner incurred and paid sums characterized by the laws of the aforesaid states as fines in the total amount of \$37,965.00 for operating on the highways motor vehicles in violation of state statutes prescribing weights of motor vehicles. Of this \$37,965.00, the sum of \$35,165.00 constituted fines imposed for exceeding the maximum weights prescribed by the statute of the state in which the fine was imposed. The balance, or \$2,800.00, of the sum of \$37,965.00, constituted fines imposed on petitioner by New Jersey. Of this amount, not less than \$400.00 constituted fines imposed on petitioner by New Jersey for operating in New Jersey a vehicle which exceeded the maximum gross weight imposed by the Pennsylvania statute but did not exceed the maximum gross weight imposed by the New Jersey statute. Such New Jersey fines were imposed in accordance with N. J. S. A. § 39:3-84.3.

9. The following table shows, with respect to the taxable year involved, the number and dollar amounts of fines and costs paid by petitioner to each of the states involved:

	Number of Fines	Dollar Amt. of Fines	Dollar Amt. of Costs	Total
<i>Pennsylvania</i>				
at \$50. each	649	\$32,450.00	\$2,709.40	\$35,159.40
at \$25. each	62	1,550.00	226.75	1,776.75
<i>New Jersey</i>	7	2,800.00	30.00	2,830.00
<i>Maryland</i>	7	410.00	29.91	439.91
<i>Ohio</i>	9	405.00	51.10	456.10
<i>West Virginia</i>	10	320.00	39.68	359.68
<i>Delaware</i>	2	30.00	9.00	39.00
	746	\$37,965.00	\$3,095.84	\$41,060.84

10. Petitioner's vehicles made approximately 77,385 trips during the taxable year in and through Pennsylvania. On a substantial number of these trips, petitioner knowingly operated without a permit vehicles which exceeded the maximum gross weight prescribed by the Pennsylvania statute, but on many of such occasions petitioner's vehicles were not stopped by the Police and consequently petitioner was not fined. On many of the 711 occasions on which petitioner was fined in Pennsylvania, as aforesaid, petitioner knowingly operated without a permit vehicles which exceeded the maximum gross weight prescribed by the Pennsylvania statute.

11. As of January 1, 1945, the maximum gross weight for truck tractor and semi-trailer combinations owned, used and operated by petitioner prescribed by the laws of Pennsylvania for motor vehicles using the highways of said state was 45,000 pounds.

12. During the entire taxable year 1951 there were in full force and effect between petitioner and its employee-drivers of its motor vehicles, represented by the Drivers and Employees of the Petroleum Industry, Local Union 273, A. F. L., and International Brotherhood of Teamsters,

Chauffeurs, Warehousemen and Helpers, Drivers' Local Union No. 110, A. F. L., and Joint Council of Teamsters Local Union No. 40 of Pittsburgh, A. F. L., agreements substantially identical to Guaranteed Agreement dated August 16, 1950, a copy of which is annexed hereto as Exhibit 2, relating, inter alia, in Article 8(b), to the operation of overloaded equipment, and prior to the taxable year agreements were in effect between petitioner and its employee-drivers of its motor vehicles with substantially the same provisions as that set forth in said Article 8(b).

13. During the taxable year petitioner paid the sum of \$36,936.15, as set forth in Paragraph 9 hereof, on the basis of notices of and informations pertaining to violations of the Motor Vehicle Code of Pennsylvania in the form set forth in Exhibits 3 and 4 annexed hereto.

14. Annexed hereto as Exhibit A is a photostatic copy of petitioner's income tax return for the year 1951. The amount of \$41,060.84 referred to above was included in "Transportation Expense . . . \$593,066.08" in Schedule B—Cost of Operations.

LEONARD SARNER,

Leonard Sarner,

Counsel for Petitioner.

(Signed) JOHN POTTS BARNES,

EMW

John Potts Barnes,

Chief Counsel, Internal

Revenue Service,

Counsel for Respondent.

SUPPLEMENTAL STIPULATION OF FACTS.

It is hereby stipulated with respect to the above entitled proceeding that if the matters set forth in this Supplemental Stipulation of Facts are admissible in evidence over the objection of Respondent as to relevancy and materiality, they may be accepted as facts.

1. The following table shows, with respect to the taxable year 1951, the number and dollar amount of fines imposed and paid in Pennsylvania as a result of the enforcement by the Pennsylvania State Police of the Pennsylvania statute prescribing maximum gross weight for motor vehicles:

No. of Vehicles Stopped and Weighed	482,082
No. of Fines for vehicles over 5% and less than 10% overweight	7,875
Dollar amount of fines for vehicles over 5% and less than 10% overweight	\$196,875.00
No. of fines for vehicles over 10% overweight	20,540
Dollar amount of fines for vehicles over 10% overweight	\$1,027,000.00
Total No. of fines	28,415
Total dollar amount of fines	\$1,223,875.00

The above table does not show, with respect to the taxable year 1951, the number and dollar amount of fines imposed and paid in Pennsylvania as a result of the enforcement of the Pennsylvania statute prescribing maximum gross weight for motor vehicles by the police of the local Pennsylvania municipalities and political sub-divisions, nor does it show the number of motor truck concerns whose vehicles were stopped, weighed and/or fined, such information being incapable of proof by the reasonable expenditure of time and effort by the parties hereto.

2. Account No. 4280 of the Uniform System of Accounts for Class I Common and Contract Motor Carriers of Property prescribed by the Interstate Commerce Commission for the year 1951 was as follows:

182.4280 *Other transportation expenses.* This account shall include transportation department expenses that are not provided for elsewhere.

ITEMS

Badges for employees.

Expenses other than wages of deadheading drivers.

Extra labor hired for loading and unloading the carrier's vehicles except at its terminals.

Fines for traffic violations.

Ice and other refrigerants.

Lodging for drivers and miscellaneous transportation employees.

Meals for drivers and miscellaneous transportation employees.

Payments to customers' employees for services after hours.

Pilot cars and drivers, cost of providing.

Plates, vehicle identification (State and others, not renewable periodically).

Repairs to transportation structures, fixtures and equipment.

Tolls—bridge, tunnel, highway and ferry.

Uniforms for drivers.

Wages, materials and tools, used in, and amounts paid others for, clearing and sanding roads.

Weighing freight, other than at carrier's terminals."

3. Motor Carrier Annual Report, Form A, required to be filed with the Interstate Commerce Commission by

Class I Motor Carriers of Property for the year 1951 sets forth, inter alia, the following:

Schedule 4000. OPERATION AND MAINTENANCE
EXPENSES

(Property Carriers)

Line No.	Item (a)	Amt. of Exp. for yr. (b)
-------------	-------------	-----------------------------

(4200) Transportation:

(4280) Other Transportation Expenses

Total

4. The Pennsylvania Public Utility Commission follows, adopts and interprets accounting words and phrases and prescribes that annual reports which may be required to be submitted to it by Class I Motor Carriers be prepared in accordance with the aforesaid Uniform System of Accounts prescribed by the Interstate Commerce Commission.

5. Petitioner did not, during the taxable year 1951, hold any operating certificate issued by the Interstate Commerce Commission and or by the Pennsylvania Public Utility Commission, and, accordingly, was not required to nor did it for said taxable year 1951, file the annual reports referred to in Paragraphs 3 and 4 hereof.

6. During the period May 1, 1945 to December 31, 1951, inclusive, Bills of which copies are annexed hereto as Exhibits 5, 6, and 7, were introduced in the House of Representatives or Senate of the State of Pennsylvania pertaining to the gross weight of motor vehicles using the

highways of Pennsylvania. None of these Bills was enacted into law.

LEONARD SARNER,

Leonard Sarnar,

Counsel for Petitioner.

(Signed) JOHN POTTS BARNES,

EMW.

JOHN POTTS BARNES,

Chief Counsel,

Internal Revenue Service,

Counsel for Respondent.

EXCERPT FROM EXHIBIT 2.

ARTICLE 8.

* * *

(b) Whenever employees are required to operate overloaded equipment or are instructed by foreman, dispatcher or some bonafide representative of the Employer to operate in violation of any laws of the various commission such as: Public Utility or Interstate Commerce, etc., and are penalized because of such violations, the Employer shall bear all costs in connection with such violations including accrued overtime and any earnings opportunity the employee might suffer. In the event that any employee may suffer revocation of his driver's license due to a succession of such violations, the Employer shall provide suitable employment for the entire period of such revocation of license at no less than his regular earnings at the time of revocation.

* * *

11/20	4008	Fred C. Wals		5350					5350
DATE	CHECK NO.	NAME		AMOUNT	CREDITS		AMT.	DISCOUNT	NET
11/20		Permy W. Stanaruck							
DATE	INVOICE NO.	AMOUNT	DATE	INVOICE NO.	AMOUNT	DATE	INVOICE NO.	AMOUNT	

TANK TRUCK RENTALS INC LANCASTER PA

TANK TRUCK RENTALS Inc:
 Transportation of Liquid Products
 MANHEIM PIKE

Nº L 1008

60-140
313

PAY

LANCASTER, PA., Dec. 1 1951

TO THE
ORDER
OF

Fred C. Wals, J.P.
Box 1, Essington, Pa.

TANK TRUCK RENTALS, INC.

VICE PRES

OFFICE MGR

THE LANCASTER COUNTY NATIONAL BANK
 LANCASTER, PENNSYLVANIA

Notice to Appear--Auto Violation

Commonwealth of Pennsylvania
County of Delaware

BB.



To Perry W. Staneruch
512 Bethlehem Pike, Ambler, Mont. Co. Penna

Take Notice that an information, of which a copy is enclosed, was filed with me against you on the 22nd day of November, 1957

You are hereby notified to appear before me at my office located at Front Street and Saude Avenue, Essington, Pa., within ten days of the date of this notice, failing which a warrant will be issued against you.

If you desire to plead guilty, you may send the fine and costs in the amount of 153⁵⁰ / 100 Dollars and you need not appear.

If you desire a hearing, please notify me at least two days before the proposed date for the same, which must not be later than ten days from the date of this notice.

Witness my hand and seal this 22nd day of November, 1957

Fred C. Walz, J.P.

(OFFICIAL TITLE)

My Commission expires the first Monday in January, 1958

Check or M. O. To Be Made To FRED C. WALZ, Justice of Peace, Box 1, Essington, Pa.

ANIBA PRINT ESSINGTON, PA.

INFORMATION Automobile A-47a

Commonwealth of Pennsylvania

County of Delaware

ss.



ANNE ARUNDEL COUNTY, MD

3282727

THE INFORMATION OF

Off. James Holland

of

Pennsylvania State Police, County of Delaware, and Commonwealth of Pennsylvania.

The said Officer being duly sworn according to law, deposes and says that or about the hour of 9.10 o'clock A.M., on the 20th day of November 1957

one Percy W. Stoneruch

residing at 512 Bethlehem Pike, Ambler - Mont Co Penna

the driver of a certain motor vehicle bearing Pennsylvania Registration License Tag No. Y625R.

violated Sub-Section 6 Section 903, Article 9 of The Vehicle Code of the Commonwealth of

Pennsylvania; while driving on the public road at Tinicum Twp., Del. County, Pennsylvania on Industrial Highway,

did unlawfully carry a gross weight of 52900 lbs., allowed by Law 45000 lbs.,

or, in excess of 7900 lbs. Charge overweight 10 per centum of that

allowed by Law.

Contrary to the Act of Assembly enacted May 1st, 1929, As amended by the Act of Assembly enacted June 22nd, 1931 and further amendments thereto.

Sworn and subscribed to before me this

20th day of November 1957

My Commission expires the first Monday in January, 1958.

Fred C. [Signature]
J. O.

Off. James Holland

EXCERPTS FROM TESTIMONY.

(15)* The Court: You may present the stipulation.

Mr. Sarnier: We present the stipulation of facts which is capable of presented at this time and also a supplemental stipulation of facts.

(16) The Court: You present them one at a time.

Mr. Sarnier: I offer the stipulation of facts, with the exhibits attached, into evidence.

Mr. Armstrong: No objection.

The Court: It will be received.

Mr. Sarnier: Your Honor, we also have a supplemental stipulation of facts which has an introductory paragraph reciting that, "It is hereby stipulated with respect to the above-entitled proceeding that if the matters set forth in the Supplemental Stipulation of Facts are admissible in evidence over the objection of Respondent as to relevancy and materiality, they may be accepted as facts."

I think I am correct in understanding that the competency and the truthfulness of the facts which are asserted in the supplemental stipulation is not objected to by the Respondent, it is just the materiality or relevancy.

Mr. Armstrong: That is correct. I object to the relevancy and materiality of these items, Paragraphs 1 through 6.

The Court: May I see the supplemental stipulation.

(A document was handed to the court.)

The Court: I have just examined the supplemental stipulation rather hastily. It does appear to me that the material contained therein is a bit remote. Nevertheless, I will accept it for whatever it may be worth.

Mr. Sarnier: Thank you, Your Honor.

* Figures in parentheses refer to page numbers of typewritten transcript.

(17) At this time I call Mr. Kahley.

Whereupon,

VICTOR R. KAHLEY

was called as a witness on behalf of the Petitioner and, having been first duly sworn, testified as follows:

The Clerk: State your name and address, Mr. Witness.

The Witness: Victor R. Kahley; 555 North School Lane, Lancaster, Pennsylvania.

DIRECT EXAMINATION.

By Mr. Sarnier:

Q: What is your occupation, Mr. Kahley?

A. I am vice president and general manager of Tank Truck Rentals, Inc.; Petroleum Transport, Inc.; and Northland Petroleum Transport Company.

Q. And the Tank Truck Rentals, Inc., is the Petitioner in this case?

A. That is correct.

Q. In what type of business is this company engaged?

A. Engaged in the transportation of liquid commodities.

Q. By what type of equipment?

A. Our equipment consists of truck tractors and semi-trailor tanks. We operate this equipment under lease arrangement with our own drivers to certificated carriers who are authorized to conduct their business either by the Interstate Commerce Commission or the state public utility commissions, or both.

(18) Q. When was the company formed, Mr. Kahley?

A. January 1, 1945.

Q. And how long have you been connected with the company?

A. Since its inception.

Q. How long have you been engaged in the business of transporting fuel liquids by motor carrier?

A. Since 1935.

Q. In what capacity were you employed in 1951 by the company?

A. As general manager and vice president.

Q. What was the nature and extent of your duty and responsibility as such officer?

A. I was in complete charge of the operations, tariff, labor relations.

Q. Therefore, am I correct in understanding that you are familiar with the matter and nature and extent of the operation of the business in 1951?

A. Yes, sir.

Q. Now you have already testified that the company well, did the company itself operate under certificates of authority granted to it by the Interstate Commerce Commission or the state public utility commissions?

A. No, they did not.

Q. Now I show you Exhibit 1 and ask you if you are familiar with this exhibit.

(19) A. Yes, I am.

Q. Will you explain what that is?

A. That is a lease agreement for the rental of our equipment with drivers between ourselves and Coastal Tank Lines who were certificated carriers authorized to do business by both the Interstate Commerce Commission and the various state regulatory bodies.

Q. Who were your lessees in 1951, if you know.

A. Coastal Tank Lines; Chemical Tank Lines; Leeman Transportation Company; Petroleum Transport, Inc., and Northland Petroleum Transport Company.

Q. What was the form of your rental or lease arrangements with these other carriers in 1951?

A. Substantially the same as the exhibit.

Q. Now returning to the mechanics of your company's operations, Mr. Kahley, how do you get your orders?

A. We receive our orders daily from the certificated carrier.

Q. What does "over-the-road transportation" mean in your industry?

A. It means the transportation of liquid commodities between towns or cities, not solely within a municipality.

Q. Is that the type of transportation that your company is engaged in?

A. Yes, sir.

(29) Q. Are you familiar with the percentage of the total amount of over-the-road transportation of bulk liquids by motor carriers which the lessees for whom you operated in 1951 controlled in the states in which you operated?

Mr. Armstrong: Just a minute. I object to this question. Your Honor, on the grounds that this witness is not competent to answer that.

The Court: You were asking him whether he knew?

Mr. Sarnes: Yes, I asked him whether he knew.

The Court: The witness can state whether he knows or not and indicate the source of his knowledge.

By Mr. Sarnes:

Q. Can you answer the question?

A. I would answer that that I feel.

Q. Just answer you know or don't know.

A. Yes, I feel I know.

The Court: Well, that is not satisfactory. Do you know or don't you know?

The Witness: No, perhaps. I would not have any fact other than statements from the other carriers as to the amount of business they possibly control.

The Court: That would be hearsay?

The Witness: That is right.

By Mr. Sarnier:

Q. Now you operate for all of these companies, do you not (21) Mr. Kahley? The companies that we have mentioned, your lessees?

A. Yes, I do. And of course today one in addition to those in 1951.

Q. Do you know the amount of equipment which they own and operate?

A. Approximate figures.

Q. Do you know the state in which they operate?

A. Yes, I do.

Q. From that information can you not say that you do know the percentage for hire transportation business which they performed in 1951?

A. Well, I would say with the lessees that we had used at that time, together with the Mathack Company, they would have controlled 85 per cent.

Mr. Armstrong: I move that that be stricken. Your Honor. This witness has not shown he is competent to answer the question. It is hearsay. He is basing it on a statement that he has heard, on what he has been told by these carriers.

Mr. Sarnier: I think that is not so, Your Honor. The witness has stated that he does know the amount of equipment which the other carriers own and operate, that he works for all of these carriers. I think he can state as a member of the industry and also as one of the lessees of all of these carriers the extent of the percentage operations of these carriers and the various phases—

(22) The Court: I do not know what percentage operation means—number of miles, percentage of gross receipts, whether it is the percentage of the number of industries. This is very vague and loose testimony. Mr. Sarnier.

I will let the answer stand with all the weaknesses appearing in it, and I will just take it for whatever it is worth.

Mr. Sarner: We will be able to clarify that.

By Mr. Sarner:

Q. In what states did your company operate in 1951, Mr. Kahley?

A. New Jersey, Pennsylvania, Maryland, Delaware, West Virginia, and Ohio.

Q. Were you engaged in inter- or intra-state business, or both?

A. Both.

Q. Do you know whether or not your lessees were engaged in inter- or intra-state business, or both?

A. In both.

Q. Do you know with respect to your own operations the percentage of your trips where Pennsylvania was either the originating state, destination state, or through which Pennsylvania was a link in an originating or destination state?

A. Will you ask me that question again?

(The pending question was read by the reporter.)

(23) The Witness: May I ask a question?

The Court: If the question is not clear, you may.

The Witness: It is not clear. I am asking whether it is strictly the interstate business or the intra- and inter-combined.

By Mr. Sarner:

Q. No, inter- and intra-business.

A. Approximately 100 per cent of the business was intra- and inter-combined.

Q. And in which Pennsylvania was either one of the states involved?

A. That is correct.

Q. Now you are familiar, are you not, with the kind and number of pieces of equipment which your company owned and operated in 1951?

A. Yes, sir.

Mr. Sarner: Will you mark this for identification.

(Petitioner's Exhibit No. 8 marked for identification.)

By Mr. Sarner:

Q. I show you this model, Mr. Kahley, which has been marked for identification as Exhibit 8 and ask you if you can explain whether or not this is similar or dissimilar to the type of equipment which your company operated.

A. Yes. This is a truck tractor and a tandem semi-trailer (24) tank. We had this type equipment and also a single axle semi-trailer which differs from this model inasmuch as it has only one axle instead of the two.

Q. Did your company have any equipment other than equipment of this type in 1951?

A. No, that is the only type of equipment.

Q. Was your equipment in 1951, if you know, similar or not similar to the equipment used and operated generally in the industry?

A. The equipment was similar to that used in the petroleum transporting industry. One of the main reasons why it was similar was that during the war years the War Production Board had issued orders to the various truck manufacturers setting up a standardized size of equipment that was to be used over the entire United States. These particular vehicles were tank vehicles and were to be of a minimum of 4500 gallon capacity.

Q. Now how did the capacities of your tanks which we have stipulated ranged between 4500 gallons and 5000 gallons, how did the capacity of your tanks compare with the tanks which were used generally in the industry in the area in which you operated?

A. Basically the same.

Q. Do you know the approximate weight of your truck tractor unloaded?

A. Yes, approximately 12,000 pounds.

Q. If you know, what are the weights of the semi-trailer (25) tanks unloaded?

A. A single axle trailer tank weighs approximately 8,000 pounds, or a tandem axle semi-trailer tank weighs approximately 10,000 pounds.

Q. What are the most common types of bulk liquid which your company carries?

A. Gasoline, kerosene, domestic fuel oil, and Bunker C fuel oils.

Q. Do you know the weights of these various liquid items?

A. Yes, sir.

Q. Will you state them, please.

A. The gasoline, six pounds per gallon; kerosene, six and three-quarter pounds per gallon; domestic fuel oil, seven pounds per gallon; and Bunker C oil approximately eight pounds per gallon.

Q. In 1951 were you familiar with the maximum gross weight limitations for your type of motor vehicle equipment using the highways in the various states in which your company operated?

A. I was.

Q. We have stipulated that the weight of Pennsylvania was 45,000 pounds and of the other states in which you operated approximately 60,000 pounds. Was that your understanding in 1951?

A. That is basically correct.

Q. Now I think you stated previously that the unloaded (26) weight of your truck tractor and semi-trailer tank would range between the 24,000 and 22,000 pounds combined. Under those circumstances how much weight, and limiting yourself in Pennsylvania for the moment only, could you have carried in the tank?

A. Approximately 25,000 to 27,500 pounds. That is taking advantage of the five per cent leeway which was a tolerance granted by Pennsylvania.

Mr. Sarnier: If Your Honor please, I do have a copy of the Vehicle Code of Pennsylvania which I meant to offer. I have one for the Respondent also. The statutory citations, it may be helpful if Your Honor has that in front of him.

The Court: I will receive it; not in evidence.

Mr. Sarnier: No, not in evidence; just as a judicial reference.

The Court: I take it the parties agree that the court may take judicial reference, notice of these provisions.

Mr. Armstrong: Yes.

Mr. Sarnier: Certainly.

The Court: I will accept this paper that Mr. Sarnier just handed up merely as a convenient way of bringing it to my attention.

By Mr. Sarnier:

Q. Mr. Kahley, who would determine in 1951 the amount of liquid which was loaded in your tanks?

A. Well, I had issued orders that all our tanks be loaded (27) to marker capacity of the vehicles.

The Court: Loaded to what sort of capacity?

The Witness: Marker capacity.

The Court: What does that mean?

The Witness: In each of these tanks they are calibrated by certificated calibrators measuring the liquid gallons. There is a rod extending down from the top of the truck which has fingers at right angles from that rod so that as this tank is calibrated to the proper capacity this finger is then placed on this rod and your

capacity then is to that particular marker. A tank-truck cannot be loaded to the full maxim of the truck. Regulations make it necessary that you have a three per cent expansion space above your liquid in carrying this commodity to take care of expansion on the highway so that you have no overflow being forced out of the tank.

The Court: Then by "marker capacity" you mean the maximum capacity of the tank consistent with this small tolerance for expansion?

The Witness: That is correct.

By Mr. Sarnier:

Q. Who supervised the amount of liquid which was loaded in your tanks?

A. The loaders at the various refineries, pipe line terminals, or quarter large terminals.

Q. Were these supervisors your employees, Mr. Kahley?

(28) A. No, it was not. The loading is done strictly by the employee of the party furnishing the product.

Q. Now do you know whether in 1951 your company operated any of its vehicles carrying a weight in excess of those prescribed by the laws of the various states in and through which your vehicles were traveling?

A. I do know that we exceeded the weight laws in the State of Pennsylvania. I also know that we did have a few fines in some of the other states.

Q. Now I note, Mr. Kahley, from Paragraph 9 of the stipulation of facts that you were fined 746 times in the year 1951 for carrying overloaded weights, and also from the stipulation breakdown of the number of fines per state. Are you familiar with the facts which are contained in the stipulation, Paragraph No. 9?

A. Yes, sir.

Q. From these facts can you tell us how many times your company operated overloaded vehicles in these various states?

A. Could you break that down into states?

Q. All right. Now turning to Pennsylvania first, I note that there are 711 violations noted for Pennsylvania. Were there more or less times that your company operated overloaded vehicles in 1951 than this 711 times for which your company was fined?

A. There were many more times.

(29) Q. Do you know how many more times?

A. I would say that during the summer months in the State of Pennsylvania 60 per cent of our loads were overweight. During the winter months at least 75 per cent of the trips in Pennsylvania were overweight, according to the Pennsylvania statutes.

Q. Do you know the reason why there was a difference between the 60 and 75 per cent?

A. Yes. Basically our 4500 gallon tanks, which were the smallest capacity we had, were legal in handling gasoline in the State of Pennsylvania—but only gasoline. During the winter months the gasoline consumption by the public is greatly reduced but the fuel oils, domestic fuels as well as industrial oils, are greatly increased for heating purposes. With full utilization of our equipment in summer and winter time, it was only natural that we be more in violation in winter time.

The Court: I think Mr. Garner asked you whether you knew, and I would like to ask whether you knew at that time that it was in excess of that.

The Witness: Yes, I did know.

The Court: Of the state law?

The Witness: I did.

The Court: And you were just taking a calculated risk that you would be caught, so to speak, in a per-

centage of the number of violations that actually happened?

The Witness: That is correct.

(30) By Mr. Sarner?

Q. Now, Mr. Kahley, when I have been speaking of operating overloaded equipment in Pennsylvania and when you said that it was 60 or 75 per cent of your trips in Pennsylvania in 1951, are you referring to exceeding the 45,000 maximum gross weight plus the five per cent leeway, or are you referring to any other aspect of the gross weights?

A. No, I am speaking generally of exceeding the 47,250 pounds. Most states do have restrictions pertaining to axle loads. However, in the bulk liquid hauling business you are not very apt to run into an axle overload. You are not like a dry freight cargo carrier. Your truck is basically engineered and you have a liquid load that is a constant load over each unit. There are rare occasions when you could be in violation on an axle overload wherein a particular tractor and trailer were attached and be perfectly legal. Then through a breakdown or some emergency on the road, you would have to change the tractor and that may not be engineered exactly the same, it may be a few hundred pounds heavier.

In these remote cases we could encounter a violation other than for gross weight. However, on our fines in Pennsylvania they were all for exceeding the gross weight.

Q. Well, now turning to New Jersey, Mr. Kahley, I note that in Paragraph 9 of the stipulation we have set forth that your company paid a certain amount of dollars for seven fines. (31) Now from that information do you know how many times your company was in violation of the New Jersey statutes?

A. Well, I would say that quite often above those seven times we were in violation in the State of New Jersey because of the reciprocity agreement between Pennsylvania and New Jersey.

Q. Will you explain what that is?

A. Well, New Jersey had a 60,000 pound gross weight limitation. However, they would not recognize anything beyond our 45,000 pounds in Pennsylvania. On any number of occasions our particular license vehicle in Pennsylvania would be picking up a load of product in New Jersey or going from Pennsylvania into New Jersey and he would be well under the 60,000 pounds prescribed by the State of New Jersey but be in excess of the 47,250 pounds permissible in the State of Pennsylvania. So I would say there were many, many times that we were over the Pennsylvania limit but—

The Court: In excess of the 7 times?

The Witness: Yes, quite a number due to that reciprocity arrangement. But at no time—

The Court: Were there any in excess of 60,000 pounds?

The Witness: I know of no violations that we have ever had in excess of 60,000 pounds in any of our operations?

By Mr. Sarner:

Q. Mr. Kahley, to continue with that thought, am I correct in understanding your testimony to mean that if you operated your vehicle which had a Pennsylvania registration in New Jersey, if (32) you exceeded 47,250 pounds you were in violation of the New Jersey law?

A. If you exceeded 45,000 pounds—

Q. Forty-five thousand.

A.—they did not allow you the tolerance of Pennsylvania.

Q. Although if you had a New Jersey registration vehicle, what would have been the maximum amount?

A. Sixty thousand pounds.

Mr. Sarner: Will you mark these two exhibits, please.

(Petitioner's Exhibit Nos. 9 and 10 marked for identification.)

Mr. Sarner: Your Honor, I don't recall whether I offered this model in evidence, but I do so now for whatever benefit it will aid you.

Mr. Armstrong: I have no objection.

The Court: That is Exhibit 8 for identification. It will be received.

(Petitioner's Exhibit No. 8 received in evidence.)

By Mr. Sarner:

Q. Mr. Kaldley, I show you two documents which have been marked Exhibits 9 and 10 and ask if you can identify these.

A. Yes. These are notices of overweight violations in (33) the State of New Jersey, one being for 50,110 pounds and the other one for approximately 54,000 pounds.

Q. They were notices with respect to what year?

A. 1951.

Mr. Sarner: Your Honor, I offer these two notices of fines with respect to New Jersey which have been marked Exhibits 9 and 10 for identification into evidence.

Mr. Armstrong: No objection.

The Court: Are those notices of violations or of fines? Is that similar to a traffic ticket? Is it issued before the sanction is imposed?

Mr. Sarner: Well, maybe Mr. Kaldley can answer that.

The Witness: Yes, they are copies of the summons. And from that, of course, we pay our fine and proceed on.

Mr. Armstrong: No objection, Your Honor.

The Court: It will be admitted.

(Petitioner's Exhibit Nos. 9 and 10 received in evidence.)

By Mr. Sarner:

Q. Now with respect to the other five fines in New Jersey, do you know what they related to?

A. We looked through our records and I could not locate any particular summons such as exhibited here. However, in quite a number of cases all you receive is a telephone call from the driver with the arresting peace officer and he tells you you are (34) in violation, please remit. So of course it was a matter of mailing the check to them and the papers with—well, it could have been forthcoming or we may have mislaid them. There were a total of seven.

Q. To rephrase the questions which Judge Raum asked you, do you know of any occasions in 1951 when your vehicles exceeded the 60,000 pound requirement prescribed by the New Jersey statute?

A. No, I do not know of any.

The Court: Could there have been?

The Witness: No, there could not have been.

By Mr. Sarner:

Q. Now I also note from Stipulation No. 9 that in the remaining states of Maryland, Ohio, Virginia, and Delaware, your company paid a total of twenty-eight fines in 1951 for violating the statutes of those states with respect to operating overloaded equipment. Were there more than twenty-eight occasions in these states for which you were fined on which your vehicles operated overloaded equipment?

A. No, I know of no other violations other than those set forth. They basically had permitted you the 60,000 pounds. If there were any included in addition to these that were set forth, I would not know of them because I

feel that any of those as set forth were inadvertent overloading fines which could have been caused by; well, the example that I previously gave pertaining (35) pertaining to the change of a piece of equipment or some of the other reasons, that due to temperature changes that causes inadvertent overloading.

The Court: Would it not be unusual that your driver would be caught in every one of the violations?

The Witness: Yes. I say I know of no violation when these particular fines—when we ran into these violations I did not know that they would be in violation prior to picking up that load or during the loading process.

By Mr. Sarnier:

Q. Well, I think we can clarify that aspect of the inadvertent overloading—I think that is the phrase you mentioned. But before we do, Mr. Kahley, am I correct in understanding your testimony to have been that there were times in 1951 when you consciously knew that your vehicles were overloaded and also there were times when they were overloaded when you didn't know about it?

A. That is correct.

Q. Now were these both conscious and inadvertent—I will use that term—overloadings confined to any of the particular states in 1951?

A. The conscious overloading was confined to Pennsylvania and New Jersey wherein the reciprocity arrangement existed between Jersey when we would not be recognized with Jersey's weight with the Pennsylvania tag. In the other states they were (36) inadvertent.

(37) Q. Mr. Kahley, before we adjourned for lunch you had testified, if I understand you correctly, that you both knowingly on the one hand and inadvertently on the other operated equipment which exceeded the maximum

weight laws of various states through which your vehicles were traveling. I would like to take up now the factors which you later found out caused your equipment to be overweight without your knowledge at the time. Could you give me an illustration or several illustrations of this which was in your experience in 1951?

A. Yes. In the loading process of the truck itself, as I mentioned before, the trucks are loaded to a marked capacity. The shipper wants to definitely make sure that his customer is receiving full weight or full gallonage. A tendency of the supervisor loading is to more than just float this marker and make sure that it is to the marker, or generally slightly above. Now that would cause a variance in going above to some number of (38) gallons and in turn be that much more weight.

One of the basic reasons why the loader does this is due to the fluxuations in temperature in going from a refinery to the point of destination. If the temperature does drop, in turn you will have a shrinkage, so to speak, of the product and then their customer is complaining to them of short weight. Therefore, they do load them in excess slightly so that the marker is full upon delivery at destination.

Mr. Armstrong: Your Honor, I move to strike this testimony. It is too general. He is not testifying to anything that he has knowledge of. He is not testifying to any facts that he has knowledge of. It is just general testimony and—

The Court: Leave it in the record. You may cross-examine on it.

The Witness: I have seen the trucks loaded above marker capacity in the loading of it. The other thing, some other reasons where he may have inadvertent overloading is on the change of temperature which you would encounter, rain or snow in freezing tempera-

ture or at the point of freezing temperature wherein the unit may leave, be perfectly legal, and in going over the highways pick up that much snow and ice that would cling to the vehicle and cause you to be overweight.

In most cases the refineries do not load this material by weight, that is by a scale. There are very few refineries or loading points who uses scales. We therefore are guided by average (39) weights per gallon of product. As an example, Bunker C, which I testified previously, weighs approximately eight pounds to the gallon. We have handled Bunker C that would weigh anywhere from seven and a half up to eight and a half pounds per gallon. We have no way of determining what that is other than the average eight pounds per gallon. So if you are loading the commodity and it is a half pound per gallon over that weight, we could very easily have inadvertent overloads.

The one other case that I had mentioned before that could cause an inadvertent overload is on the substitution of a particular tractor unit together with that tractor wherein from an engineering design it would not be on perfect balance so far as those axles are concerned and could also cause an inadvertent overload.

By Mr. Sarner:

Q. Now if I understand your previous testimony correctly, with the exception of Pennsylvania and New Jersey your violations in these other states were of this type that you have just mentioned?

A. That is correct.

Q. Now addressing yourself only to Pennsylvania—

The Court: That is, so far as you know.

The Witness: So far as I know.

By Mr. Sarnier:

Q. Well, with respect to the operations of your company (40) in 1954, you would know all the facts with respect to the overloaded equipment which was being operated?

A. Yes, sir.

Q. Now, addressing yourself only to Pennsylvania for the moment, Mr. Kahley, do you know whether your conscious overloadings in 1954 were more or less frequent than your inadvertent?

A. They were more frequent than the inadvertent.

Q. Now was this practice of knowingly exceeding the Pennsylvania weight limitations confined to 1954 or did it exist prior thereto?

A. As I testified before, in fact during the war years the War Production Board had set forth a particular sized tank that should be suitable for the entire United States, and at that time the manufacturers were instructed to build tanks of no less than 4500 gallon capacity.

Mr. Armstrong: I object to that as hearsay.

The Witness: It is not hearsay.

The Court: He may state what instructions his company received.

Mr. Armstrong: Well, that is not what he testified to, sir. He testified that the manufacturers received such instructions.

The Witness: May I answer the question?

The Court: I would like to hear from counsel for the Petitioner.

(41) Mr. Sarnier: Well, I think the substance of what Mr. Kahley stated so far was to the effect that because of regulations of the War Production Board he could not purchase tanks other than 4500 gallons.

The Court: He may state the kind of trucks or equipment that was available to his knowledge.

Mr. Sarnier: All right, Your Honor.

The Witness: As I testified before, due to the fact that we could purchase only 4500 gallon tanks or larger, which I understand was an order of the War Production Board, we of course violated knowingly from the war years on up through 1951.

By Mr. Sarnier:

Q. Well, now, prior to 1951 what was the experience of your company, if you know, with respect to the enforcement of the weight laws by the Pennsylvania authorities?

A. During the war years and up until the latter part of 1950, although our trucks were overweight we were not stopped by the Pennsylvania authorities and were permitted to carry overloaded load on the highways in Pennsylvania. However, in the latter part of 1950 and the early part of 1951, we were then apprehended by the police officials and fined for overloaded vehicles.

Q. Now you know the amount of fines. Do you know what your company paid in 1951?

A. Yes, sir.

(42) Q. In Pennsylvania?

A. Approximately \$37,000.

Q. Now may I ask you what reason or reasons, if any, you had in consciously using overloaded equipment in Pennsylvania when you were subject to the payment of these fines?

A. Well, hauling the overloaded equipment was the practice in the industry because of not being restricted for these prior years.

Mr. Armstrong: I object to that. I don't think this man is competent to testify as to what was the widespread practice of the industry. He can speak only with respect to his own organization.

Mr. Sarner: Well, I don't think that is so, Your Honor. I think he can testify as to what the other people in the industry were doing and what he had to do to combat or be in accord with the individual practices as such.

The Court: I would think that a condition could be so notorious that it would be within the knowledge of a witness. He need not state what the conditions were, but he can state what certain practices existed.

Mr. Sarner: All right.

By Mr. Sarner:

Q. You had started to say, Mr. Kahley, why your company operated this overloaded equipment when you knew that it was in excess of the amounts allowed by Pennsylvania law.

(43) A. Well, if we had attempted to shall I say change our equipment, it would have meant the scrapping of our entire fleet which would have been wholly uneconomical. It is doubtful if equipment of smaller capacity would have been available at the minute to make that type transformation. At the same time our competitors were hauling exactly the same amount of product more or less generally. Therefore from a competitive basis if we would have had to compete with the smaller tank truck, naturally we would have had to raise our rates and priced ourselves out of business.

Q. Well in that connection, how is your pay load figured? Is it figured on—well, how is the pay load figured?

A. Well of course everything is predicated on distance, so much per gallon for hauling between two points.

Q. Then if you hauled a smaller amount of gallons, would that lower your revenue from that trip?

A. Yes. We are paid on a per gallon basis, so naturally if we lowered it our revenue would be smaller.

Q. Well, now, you were a lessor of equipment to the certificated carriers, were you not?

A. That is correct.

Q. Did you consider an amplification of this reduced pay load charging more to your lessees in 1951?

A. Well, we considered it but knew the competition would force us out of the field if we had tried to charge a higher (44) rate than what the lessor was collecting. Naturally he could not pay us more than what he was receiving for hauling this product.

The Court: Did that mean you would have to operate at a loss or that your profits simply would have been diminished?

The Witness: We would have to operate at a loss at that time in order to operate a legal truck in Pennsylvania.

By Mr. Sarnier:

Q. Did you discuss the problem of being automatically compensated for operating within the legal limits of Pennsylvania?

A. Yes, I spoke to the people to whom we had equipment leased. Of course they have to be fearful themselves of trying to increase any rates for fear of driving that business back to private carriers, meaning the refineries themselves or to the rails where they would price themselves out of the field and competition would take over.

Q. Do you know whether any consideration was given by the industry as a whole whereby all the carriers would increase their rates and abide by the Pennsylvania weight limitations?

A. I know there were discussions at meetings which I had sat in together with other carriers discussing this possibility. However, as I say, competitively they felt it would be unwise and would price them out of business.

Q. Can you amplify that a little more, Mr. Kahley, when (45) you say "would price them out of business"? To whom would the business be referred?

A. Either that the refineries themselves would put on their own equipment and haul it themselves as private carriers, or the possibility of the rails regaining the business.

Q. Now you mentioned earlier the problem of your existing tank capacity equipment. Would it have been possible to decide from the revenue factor which you have just mentioned—say you were carrying anything other than gasoline, for example let us assume you were carrying Bunker C, to load a smaller number of gallons into your 4500 gallon tank and therefore be within the legal limits?

A. Well our experience in trying to operate with a partially loaded tank we found was a very unsafe operation. Within these tanks of course there are levels, and when you have a partially filled tank there is more surge inside that tank through the motion on the highway and that in turn causes a cracking of the baffles which would then cause leaks and the possibility of spillages on the highway.

In bringing a vehicle to a stop with this tremendous surge inside on a partially loaded tank you have the danger that you feel the unit is just about stopped and then this surge hits your tank and drives you forward a few feet and could very easily cause an accident, forcing you into a vehicle in front of you. A partially loaded truck on the highway gives a surge which (46) could very easily cause the vehicle to be overturned. It has been our practice that it is too unsafe to load a partially loaded truck.

Q. Since you state it was your practice that it would be unsafe, did you consider the possibility in 1951 of acquiring smaller sized tanks so that you could load them to capacity and still stay within the weight limitations of Pennsylvania?

A. Well in 1951, basically there were no engineering changes from the equipment so far as lightening the equipment.

Q. I am talking about the size at the moment. Did you consider the possibility of assuming smaller sized tanks, say of 4,000 gallons or 3,500 gallons?

A. No. We inquired and found that they would have been available after those years. However, as I pointed out before, it would have been very uneconomical for us to scrap our entire fleet. Again, if we hauled the 1,000 gallon load and our competitors were hauling a 4,500 gallon load, it would put us in an uncompetitive class with them.

The Court: Was each of these tanks a single unit or was some tank compartmentalized, so to speak?

The Witness: There were both single compartment tanks and multiple compartment tanks.

The Court: In the case of multiple compartment tanks if you just loaded some of the compartments, you would not have the problem of surge you were speaking of.

(47) The Witness: You mean if you left the one tank empty entirely?

The Court: If you loaded the two end compartments and left the middle compartment unloaded, would that be a feasible thing to do?

The Witness: You would not have the surge but in turn you would have approximately one-third less gallons that you would be hauling, so from an economical standpoint it would put you away below.

The Court: I understand that, but I am addressing myself to the problem of danger that we were discussing before in a partially loaded tank.

The Witness: You would not have the surge safety factor involved wherein the compartment itself was entirely empty.

By Mr. Sarnier:

Q. Insofar as your vehicles were overloaded and you considered the possibility of a partial loading, was it under consideration that the partial loading would be to the extent of one-third less of the original amount?

A. Approximately one-third.

Q. For the compartment?

A. That is right.

Q. Were you familiar since your connection with the company in 1945 with any pending legislation which was being introduced in the State of Pennsylvania with respect to the weight (48) laws?

A. Weight laws, yes. We were very aware of the industry trying from 1947 on to secure higher weights. As a matter of fact, the 45,000 pound weight law under which we operated was a temporary war measure and was finally enacted into law in 1945. At each session of the Legislature there were bills sponsored to increase the weight in the State of Pennsylvania to bring that weight restriction up to our surrounding states.

Q. Now did this legislation play any important part in your determination, your decision not to acquire smaller equipment?

A. Yes, it did, as much as if we had gone ahead and tried to secure smaller tanks and secured smaller tanks. We, shall I say, were very optimistic as to getting weight relief in Pennsylvania. With that hanging above us all the time, we would have immediately upon receiving weight relief found ourselves with an obsolete fleet. Each two years that the Session did meet we did feel that what we presently were operating would become legal at that Session of Legislature to that extent. The bill passed both houses and was finally vetoed by the Government.

Q. Did your operations outside of Pennsylvania play any part in the type of equipment you had to have in 1951?

A. Yes. Our lease arrangement with these various certificated carriers calls for us to give them service in peak seasons; otherwise, we would be of no value to them. What could happen (49) particularly during the winter season, this business being rather seasonable, the source of supplies can very readily change to freezing of barge points and a secondary source of supply would have to be set up.

As an example, we may be pulling out of a pipe line terminal right here in the eastern part of Pennsylvania, and due to not having the product in that terminal due to weather conditions, they may assign a secondary source of supply in the State of New Jersey. Our trucks have to be flexible enough to move wherever that source of supply may be.

Q. Was it necessary that your trucks be available for use in other states?

A. Oh, yes. That is generally true within our whole industry; that we must have the flexibility to assist them in whatever states that we are operating.

Q. Could you have used the smaller trucks in these other states?

A. Not economically. They could have been used. However, the rates in those other states where they had the 60,000 pound weight law were predicated on hauling a 60,000 pound weight load. Naturally if we had to go over and send a fleet of trucks hauling 45,000 pounds, we would be at a distinct disadvantage and lose money.

Q. Do you know, Mr. Kahley, whether in 1951 any tanks were engineered of the same capacity as those which you had but (50) of a lighter metal such as, say, aluminum?

A. No. Up until 1951, basically the tanks were made of iron and steel. The particular thickness of the iron and steel is prescribed by regulations set forth by the Interstate Commerce Commission and regulatory bodies. Now there were some aluminum tanks available in some states, but not nation-wide. It was not approved by the state regulatory bodies on aluminum tanks.

Q. Do I understand you correctly when you state that none of the lighter material tanks would have been available in 1951 for your company?

A. That is correct.

Q. Now I call your attention to Paragraph 10 of the stipulation wherein we said that on a substantial number

of your Pennsylvania trips your company knowingly operated without a permit vehicles which exceeded the maximum gross weight prescribed by the Pennsylvania statute. Did you know, Mr. Kahley, in 1951 whether or not Pennsylvania had any provisions in its law for obtaining a permit to operate a vehicle in excess of the 45,000 pound maximum?

A. Yes, they did have the provisions. I did know that most all states that have weight restrictions do have procedures to secure a permit for an overloaded vehicle.

Q. Did you in connection with your company consider the possibility of obtaining permits in 1951 for the trips which you knew would be made with loads exceeding the legal limits in (51) Pennsylvania?

A. Yes, we considered that possibility. However, it usually entailed or would entail several days to secure the permits. Then it is strictly at the discretion of the local township road authority whether or not that permit would be granted. I might also state that a permit is granted for one particular load. Here was a vast majority of our loads, so it would have been impractical for us to secure the permit because of the delays. Our customers wanted the load of material, and we just would not have been able to give them any service.

Q. Did the cost of the permit in any way play a part in your decision?

A. Yes. The permit is granted, and on the overweight you must pay on a ton-mile basis so that basically the size equipment we were running would generally cost the same as the overload fine. So I say we took our chances and risked the overload fine rather than run into the delays or secure the permits.

Q. Did your interstate carriage have any effect on your decision not to seek the permits each time you came into Pennsylvania?

A. Yes. If we picked up a load in New Jersey say of 55,000 pounds and got to the Pennsylvania border and it would be a matter of maybe a couple days to secure the

permit, again that would not be giving the customer the kind of service that he would want.

(52) Q. Now, Mr. Kahley, were you familiar with what the practice of your competitors and other people in the industry was with respect to obtaining the permits?

A. Yes. We had discussed that at various meetings and all came to the same conclusion that it was not feasible to attempt to get the permits.

Q. Now were any other sanctions imposed on your company in Pennsylvania in 1951 other than the payment of the fines which you have indicated with respect to operating the overweight in vehicles?

A. No.

Q. Am I correct then in understanding that the fine was the only sanction?

A. That is all.

Q. Now in this connection, Mr. Kahley, do you know whether in 1951 any of your vehicles which were overweight for which either you were fined or not fined had to be unloaded in 1951 in order to remove the excess weight?

A. No, we never had to unload an overloaded piece of equipment.

Q. Was that true only in 1951 or was it true also in prior years?

A. It was true in prior years and on up until 1955, until the enactment of this new Pennsylvania weight law.

Q. Is this true for Pennsylvania alone or for the other (53) states?

A. This is basically true for Pennsylvania.

Q. What has the experience of your company been in the other states?

A. Our experience in the other states, I do not recall of ever having to unload a load. I do know of other operators where they did have to unload.

Q. Do you know of any tanks of your competitors in Pennsylvania or other members of the industry which were required in Pennsylvania in 1951 to be unloaded?

A. I do not know of any, and I doubt if there were any. I believe that would have been discussed at some of our conference meetings if it had been the case.

Q. You would have known about it if it had occurred?

A. I feel reasonably sure it would have come up in a discussion at some of our forums.

Q. Were any of your drivers, if you know, arrested or imprisoned or were their operator's licenses suspended for operating your overweight vehicles in 1951?

A. No, they were not. All that was necessary was that the fine be paid.

Q. Mr. Kahley, we have stipulated in Paragraph 9 that you paid in 1951 the total sum of \$41,060.84, representing fines and costs for operating overloaded equipment. Who paid these fines?

A. Our company.

(54) Q. Were you reimbursed for this sum or any part thereof by your lessees?

A. No, sir.

Q. How long have your rental arrangements with your lessees been in effect?

A. Since 1945.

Q. Were the agreements in prior years substantially the same or different from the Coastal agreement, Exhibit No. 1, which you saw?

A. No, they were substantially the same. In there it sets forth that we would absorb any fines.

Q. Then how did your lessees and you treat the responsibility for these fines?

A. It was solely our responsibility and we had to pay.

Q. Did you have any understanding or agreement that they would reimburse you for \$41,000 or any part thereof?

A. No, sir, they would not reimburse.

Q. Mr. Kahley, I show you Exhibits 3 and 4 of the stipulation which are the notices of the fines addressed to certain named individuals. Will you tell us who those individuals are?

A. They are drivers on our pay roll.

Q. Were all your Pennsylvania fines in 1951 addressed to the driver or were some of them addressed to your company?

A. All the fines in Pennsylvania are addressed to the driver.

(55) Q. Who paid these fines, the company or the driver?

A. The company paid all fines.

Q. Can you tell us the reason why the company paid these fines?

A. Well in our labor contracts with the American Federation of Labor it so sets forth that any fines that are not under the control of the driver must be paid by the company.

Q. I call your attention to Article 8(B). Will you just read the first line or so of that and answer whether or not that is the provision to which you refer?

A. "Whenever employees are required to operate overloaded equipment or are instructed by foreman"—do you want more than that?

Q. That is all right. That is Article 8(B) of Exhibit No. 2. Is that the provision to which you refer?

A. That is correct.

The Court: Who would pay a fine for a speeding charge, for example?

The Witness: That is the responsibility of the driver.

The Court: He would pay that?

The Witness: He would pay that fine. Parking violation or speeding or reckless driving, that is entirely up to the driver; we do not pay any of those.

The Court: Overloading was due to your decision and not the driver's, and therefore you paid the fine?

(56) The Witness: That is correct.

By Mr. Sarnier:

Q. On that, Mr. Kahley, the conscious overloading was due to your decision, is that right?

A. That is right.

Q. Did you mean to answer Judge Raimi by indicating that the inadvertent or unknowing loading was due to your decision?

A. No; the inadvertency would not be due to my decision. However, the union contract could do nothing but force me to pay that fine. Whether it was inadvertent or conscious we would have to pay it, regardless.

Q. Regardless of who was at fault?

A. That is correct.

Q. Do you know which peace officers in Pennsylvania in 1951 were charged with the responsibility of enforcing and did enforce the maximum weight laws?

A. Yes, the State Police and the local municipalities. I might also add that our records indicate that approximately 60 per cent of our violations on which we were apprehended were made by the State Police and 40 per cent of them were made by the local municipalities.

Q. Mr. Kahley, I would like to turn back to the question of permits again. Do you know whether it would have been possible on all of your trips to obtain a permit?

A. No, I don't think we would have been able to obtain (57) permits because as I understood it is for an occasional load that they will issue a permit. If I were coming back in there day after day for the same piece of equipment and same load, I am quite sure I would have been turned down so far as being granted a permit.

Q. Was the question of obtaining permits discussed by the industry as a whole at any meetings where you were present?

A. Yes, it was discussed.

Q. What conclusion was reached by your industry with respect to this practice?

A. I think I did have that in the testimony before, that the entire industry—and when I speak of the entire industry I am speaking of those with whom I did business with—were all of the same opinion, that it was not feasible to secure permits.

Q. Would it have been possible for you to have, let us say, sort of a permit for each overloaded vehicle whereas the rest of the industry did not?

A. No, I don't think it would have been feasible for us inasmuch as I have testified before that we took our chances on running the overloaded truck and were only apprehended a small percentage of the time. For us to have that expenditure for each and every load, I am quite sure our competitors again would have had a distinct competitive advantage in not buying a permit.

The Court: What was your average load?

The Witness: The average load?

(58) The Court: Yes.

The Witness: In Pennsylvania?

The Court: Yes.

The Witness: If we haul 4500 gallons of gasoline, we were under the Pennsylvania state regulations of 47,000 pounds. If we had 4500 gallons of fuel oil—in other words, forty-seven on a load of gasoline, that is basically six pounds per gallon. So if we handled domestic fuel, 4500 gallon weights of 4500 pounds against gasoline so that there we would weigh approximately 51,000 pounds. If we loaded kerosene that would be three-quarters of a pound per gallon more than gasoline, so 4500 gallon would be roughly 3600 pounds above the Pennsylvania weight. On the eight pound per gallon it would be approximately 8,000.

By Mr. Sarnier:

Q. But in all cases it would be under the 60,000 pounds?

A. That is correct.

Q. And that was the maximum prescribed in the other states through which you operated?

A. That is right.

Mr. Sarner: No further questions.

CROSS-EXAMINATION.

By Mr. Armstrong:

Q. Where is your company located, Mr. Kahley?

A. Lancaster, Pennsylvania.

Q. And that is where your vehicles are kept?

(59) No, we have terminals in Paulsboro, New Jersey; Woodbridge, New Jersey; Norristown, Pennsylvania; of course our main office in Lancaster; Duncansville, Pennsylvania; Midland, Pennsylvania; Irwin, Pennsylvania. That is it for 1951.

Q. Well, that is confined—

A. Excuse me, I have a correction. In 1951 there was no Woodbridge terminal in New Jersey.

Q. All the questions I am asking you pertain to 1951.

A. Yes, sir.

Q. Now it has been stipulated that your vehicles made 77,385 trips in the State of Pennsylvania in 1951.

A. Yes, sir.

Q. Could you say what percentage of those trips were made for hauling gasoline, what percentage of those trips you hauled kerosene, and on what percentage you hauled these other two items you mentioned?

A. Our gasoline would be approximately 30 to 35 per cent of our total volume. I would say that on the heavy oils which I referred to there as bunker oils would be approximately 35 per cent of our volume. The balance of approximately 30 per cent would be the domestic fuel oils and kerosene.

Q. Well, now, you said that you would have had to scrap your whole fleet if you had converted to larger equipment, larger tankers. Now could you not have maintained

this fleet and hauled gasoline in the trucks you had and then on the hauls of the heavier (60) fuel oils used the tankers which are separated into compartments and just used two of the three compartments for the heavy oils?

A. I think I testified there that on those jobs that were compartmented it would have meant a cutting of our capacity of approximately one-third. It would not have been economical.

Q. Excuse me. It would not have been economical on that particular load?

A. That is correct.

Q. For your over-all business you could have used the same vehicles you had, could you not?

A. Let me try to answer you this way: At the time during 1951, we had approximately—can I refer to the stipulation to the number of tanks—112 tanks, I believe, in operation. One hundred twelve tanks.

Q. You mean semi-trailers?

A. Yes. That is the tank that you are speaking of the possibility of being compartmented. I would say that of that 112, not more than twenty of them were compartmented jobs. The rest were all single compartments. As I mentioned to you, 35 per cent of our product is handled on this heavy oil. That has to be in a single compartment tank; I mean you cannot have multiple compartments. It is a heavy oil and clings too much to the sides and causes a problem in loading and unloading.

On the gasoline, in order to operate legally the 4500 gallon (61) job is a single compartment tank. Otherwise if it was a compartmented tank, it would weigh a whole lot more because of your baffles, valve setups, and everything else.

Q. Do you use the same tanks for all of these fuels, or do you use only one?

A. We use only the same tanks for kerosene, gasoline, and light domestic.

Q. You never put heavy fuel in the compartmented tanks?

A. In the compartmented tanks, no, we do not.

Q. Did you operate any vehicles in and around Philadelphia?

A. Out of the Philadelphia refining area, yes, sir.

Q. Would that include Montgomery County, Bucks County, and Delaware County?

A. Yes, sir.

Q. You said that the loading was supervised, I believe, by the person who furnished the load. In other words, that would be the refinery, is that correct?

A. Refinery or pipe line terminal.

Q. Now how would you know whether or not that truck went out overloaded? How would your company know?

A. Well, if I sent that truck in for a load of fuel oil and my instructions are that that truck is to be loaded to top capacity—that is, to our marker capacity as explained before—and if it is a 4500 gallon tank and it weighs seven pounds to a gallon, and the weight of my vehicle, I know that it is overloaded by adding the two factors together.

(62) Q. Yes, but didn't you say it was a practice of loaders generally to overload the vehicles?

A. In floating the marker, that is correct.

Q. What do you mean by "floating the marker"?

A. As I explained before, there is a marker in this tank so that your customer receives, or his customer receives full gallonage upon point of destination. They will make sure that that marker is more than floated because the change of temperature that you will have causes a shrinkage within that tank. In other words, there may be a load loaded in Philadelphia, say, on a nice hot summer day. The product coming out of that tank would be loaded, say, at 60 degrees. So when it gets up to the point of destination, the outside temperature being higher would cause it to be higher, expand.

Now that is just in reverse in the winter time. It could be loaded at the 60 degrees and go through zero, where in turn you would have a strengthening.

Well, the refinery does not want their customer to feel that he is getting a shortage, so to make sure it is only human nature that the loader in turn will make positively sure that his customer is getting a full tank when it gets to the point of destination.

Q. Did you also let that three per cent air space?

A. Yes, sir.

Q. So on the 4500 gallon tanks, would your marker be up (63) to a point that was up to that three per cent air space point?

A. You could very readily have more than three per cent, I mean within a fraction. In other words, the Interstate Commerce Commission sets forth that it must be three per cent expansion or more to take care of the safety factor of expansion. So normally I say on a 4500 gallon tank where the marker is set on a 4500 carrying capacity tank, the possibility of your three per cent would probably be three and three-quarters, three and a half per cent rather than three per cent. You must have three per cent tolerance in there. I mean you have your tanks calibrated on even gallonage, and a few gallons above that is your tolerance.

The Court: How significant was that overloading due to the shipper's desire to see that the consignee had a good bargain for it? Was that in terms of just a few extra gallons or was it a significant amount?

The Witness: No, I don't think it was significant.

The Court: So that excuse was not the thing that caused the fines?

The Witness: No, indeed not, to any great degree. It could mean a matter of ten or fifteen gallons. Eight pounds per gallon would be one hundred pounds.

The Court: That would be comparatively inconsequential then? If you had a violation, you would have had a violation without that in most cases?

(64) The Witness: In most cases in Pennsylvania, yes.
By Mr. Armstrong:

Q. Do you know approximately how many carriers were operating in Pennsylvania in 1951?

A. Approximately?

Q. Yes.

A. You mean certificated carriers or all carriers?

Q. All carriers, such as your organization.

A. Well, when you say "all carriers" do you mean the refineries?

Q. No, such as your organization and larger.

A. Well, such as our organization as a rental company, I only know of two in Pennsylvania.

Q. Well, what about common carriers then?

A. In Pennsylvania I would say that there was approximately a dozen in petroleum—

Q. I am not talking about petroleum, I am talking about in the general field hauling all sources of —

A. You mean dry freight carriers and so forth?

Q. What?

A. You mean dry freight carriers and so forth?

Q. I don't know that term.

A. The term "dry freight"?

Q. Including those.

A. I would not venture a guess on dry freight.

(65) Q. Would you say your company is small, large, medium, or what compared to the other carriers of petroleum products?

A. I would say a fairly large company.

Q. In 1951?

A. Yes.

Q. Now that comparatively dozen that you know of, that amount being in?

A. Yes. In Pennsylvania in 1951, I would say that there were possibly three larger than ourselves in Pennsylvania.

Q. But many refineries had their own vehicles, is that right?

A. Excluding the refineries own fleets of trucks; I am not speaking of them. Atlantic Refinery has a very large fleet.

Mr. Armstrong: I have no further questions.

RE-DIRECT EXAMINATION.

By Mr. Sarnier:

Q. You started to answer there were three carriers that were possibly larger than your company in 1951. Which three were you referring to?

A. The Leeman Transportation Company; their interest which includes Chemical Tank Lines, Inc., which I consider as one; Coastal Tank Lines; and E. Brooke Matlack, Inc.

Q. Then between those three companies and yourself, do you know the dollar volume of the business which those companies controlled?

(66) A. In 1951?

Q. Yes.

A. Well, I would have to venture a close approximation.

Mr. Armstrong: I object, Your Honor. This witness is not competent to answer that question.

Mr. Sarnier: Counsel asked on cross-examination if he knew any larger companies.

Mr. Armstrong: I say he is not competent to testify as to how much volume of business these other companies have.

The Court: What is the purpose?

Mr. Sarnier: The general purpose is to show that the companies which Mr. Kahley works for and has

knowledge of, and the industry witnesses here from the companies will testify as to this common practice in the trade of operating the overloaded equipment and the necessity for it and the competitive features, and I wanted to establish that Mr. Kahley's testimony and his experiences were substantially the same as what was true in the industry.

The Witness: Well, approximately \$25,000,000.

Mr. Sarnier: Just a moment.

The Court: On cross-examination he has already indicated that these other three companies are larger.

Mr. Sarnier: Yes, sir.

Mr. Armstrong: Yes, Your Honor.

The Court: What is the point in showing how much (67) larger?

Mr. Sarnier: We were not concerned with how much larger. We have no evidence here as to how large Tank Truck Rentals was except by number of equipment, if that means anything. I think that it is proper for us to show that Tank Truck Rentals and various other carriers represented the industry as a whole in this area.

Mr. Armstrong: How can this witness know the volume of business done by the other three carriers? He is not competent to testify.

Mr. Sarnier: He can testify as to the fact he worked for all of these carriers. He worked for these carriers, he knows the fleet.

Mr. Armstrong: Not in 1951.

Mr. Sarnier: Oh, yes, he did in 1951.

The Court: That is not the evidence.

Mr. Sarnier: Yes, Your Honor.

The Witness: Yes.

Mr. Sarnier: We stipulated that.

The Court: I have not read the stipulation with that much care.

Mr. Sarnier: It was not pitched for that. Well, maybe we say who the lessees were.

The Witness: I testified to that.

Mr. Sarnier: I guess we didn't stipulate who they were. (68) Well, Mr. Kahley did, I believe, in the early part of his testimony testify to the names of his lessees, and they are these companies that we are referring to.

Mr. Armstrong: They are not comparable to his organization. They are the lessees.

Mr. Sarnier: Comparable in what sense?

The Court: Gentlemen, I think there is a quibble here. The objection goes to the magnitude of the operations; that is, goes to the question that seeks to elicit from the witness the magnitude of the business of his three larger competitors. The Government is objecting to that question on the ground that this witness is not in a position to know of his own knowledge the magnitude of those operations.

Mr. Sarnier: The response of the taxpayer is that he is in a position to know because these were not only his competitors but also his own lessees, and therefore he did know the extent of their—well, we can ask whether he knew the extent of their nature or operation of their business.

The Court: As I inquired of you before, it seems to me it gets you no place in any event, even if you get the answer. You have already established that he has three competitors whose operations are of larger magnitude than his own. It seems your only interest is not to show the magnitude of those operations of those

three competitors but simply to show what the practice of those three competitors was in relation to the problem; (69) namely, that they persisted in violating overloading provisions in the same manner that the Petitioner did.

Mr. Sarner: All right.

The Court: Even if you succeeded in getting from the witness his statement as to what the magnitude of the operation was, it would not be impressive to me. I am already satisfied from his testimony that the three competitors had operations that were larger than this Petitioner. From your point of view it seems that the important thing to establish is that those three competitors followed a similar practice.

Mr. Sarner: That is right.

The Court: How far that advances you legally is another matter. It seems to me that is the line that you want to achieve.

Mr. Sarner: Surely it is; that is right.

All right, Mr. Kahley, I think that is all. I have no further questions.

Mr. Armstrong: No further questions.

The Court: All right.

(Witness excused.)

Mr. Sarner: I call Mr. Kenneth R. Sechrist.

Whereupon,

KENNETH R. SECHRIST was called as a witness on behalf of the Petitioner and, having been first duly sworn, testified as follows:

(70) The Clerk: State your name and address, please.

The Witness: Kenneth R. Sechrist; 360 Old Orchard Lane, York, Pennsylvania.

DIRECT EXAMINATION.

By Mr. Sarnet:

Q. What is your occupation, Mr. Sechrist?

A. I am Secretary and Treasurer of Coastal Tank Lines, Inc.

Q. What type of business is your company engaged in?

A. In the transportation of petroleum, coal tar, and chemical products by tank truck.

Q. How long have you been connected with the company?

A. I have been connected with the company since October 1949.

Q. How long have you been engaged in this type of business?

A. Prior to entering into the transportation field in the industry I was a certified public accountant and had done work with transportation companies as well as other companies.

Q. Then since 1949 you have been with—

A. Coastal Tank Lines.

Q. In what capacity were you employed in 1951?

A. I was Secretary and Treasurer of the company.

Q. What was the nature and extent of your duties and responsibilities as such officer in 1951?

(71) A. I was in charge of the financial and accounting data of the corporation. I was also a member of the board of directors.

Q. In 1951 were you familiar with the name, the nature, the extent, and the operations of the company?

A. Yes, I was.

Q. Did your company operate under certificates of authority granted to it by the Interstate Commerce Commission or the state public utility bodies?

A. Yes, we were authorized both by the Interstate Commerce Commission and intrastate by various public utility companies.

Q. In what states, if you know, Mr. Sechrist, did your company operate principally in 1951?

A. We operated principally in Pennsylvania, Maryland, New Jersey, Delaware, Virginia, West Virginia, and in the various other states only on intrastate or interstate business.

Q. Well, were you engaged in interstate or intrastate business, or both?

A. We were engaged in both.

Q. Are you familiar with, say, the Loeman Transportation Company or Matlack, Inc.?

A. Yes.

Q. In what type business are these companies engaged?

A. In the same type business, which is the transportation of petroleum, coal tar, and chemical products by tank truck.

Q. Do you know the taxpayer?

A. Yes, I do.

Q. Do you know the type of business it is engaged in?

A. Yes. They lease equipment to Coastal Tank Lines.

Q. What does that equipment consist of?

A. It consists of a tractor—that is, a truck tractor and a semi-tank trailer with a driver.

Q. Did you have any business dealings with Tank Truck Rentals, Inc., in 1951?

A. Yes, we did the entire year.

Q. What were those dealings?

A. They supplemented our equipment in times of rush periods in which we had a volume movement to make. They also helped out during the entire year, as we felt that we were required to give them business during the entire year in order to have more equipment available during the rush periods.

Q. Turning back to your own operations in the year 1951, Mr. Sechrist, do you know the approximate number of trips which were operated by your vehicles in the states you have mentioned in 1951?

A. We operated approximately 171,000 trips in 1951.

Q. Do you know the approximate percentage of your own trips for which Pennsylvania in 1951 was either the originating state or the destination state, or interstate carriage was in Pennsylvania?

(73) A. May I have that question repeated, please?

(The pending question was read by the reporter.)

The Witness: I understand you want to know the approximate number of trips that we operated having either Pennsylvania as a point of origin or point of destination.

By Mr. Sarnier:

Q. Or solely within Pennsylvania?

A. We were traveling in Pennsylvania.

Q. That is right.

A. Approximately 67 per cent of our business was inter- and intrastate Pennsylvania.

The Court: And the remainder of the trips involved no contact with the state at all?

The Witness: That is right.

By Mr. Sarnier:

Q. Are you familiar with the kind of equipment you owned and were operating in 1951?

A. Yes, I am.

Q. Will you tell us what that was?

A. We operated truck tractors and semi-tank trailers. Those trailers had a capacity of from 4500 to 5600 gallons.

Q. Was your equipment, if you know, Mr. Sechrist, similar or not similar to the equipment used and operated generally in the industry in 1951?

A. It was similar.

Q. Do you know how many pieces of equipment your company owned and operated in 1951 other than that which was leased, say, from Tank Truck Rentals or other possible lessors?

A. I believe we owned 147 truck tractors at the end of 1951, and we owned 174 tank trailers.

Q. As I understood you before, you supplemented that fleet of your own with leased equipment.

A. That is right, with leased equipment.

Q. Now were you in 1951, Mr. Sechrist, familiar with the maximum gross weight requirements for this type of equipment in the states through which your company operated?

A. Yes, I was.

Q. Do you know whether in 1951 your company exceeded the weight limitations of any of the states by the operation of any of its own vehicles, not those which were leased?

A. Yes, we did.

Q. Taking up Pennsylvania first, as I understand your former testimony about two-thirds or 67 per cent of your total trips were into or through Pennsylvania.

A. That is right.

Q. Do you know in approximately how many of these Pennsylvania trips your vehicles exceeded the Pennsylvania laws? You don't have to give exact amount, just some percentage.

A. I would imagine it would be in the neighborhood—

Mr. Armstrong: I object. This man is imagining.
(75) Either he knows or does not know. Your Honor.

By Mr. Sarnier:

Q. Do you know on how many of your Pennsylvania trips you exceeded the Pennsylvania laws?

A. I actually do not know the exact number.

The Court: Was it your policy to fill your tanks to maximum capacity?

The Witness: Yes, it was.

The Court: When the tank was filled to maximum capacity, did the vehicle plus cargo exceed the—

The Witness: In some cases it did and in some cases it didn't.

The Court: What type of cases did it not, and which did?

The Witness: When we hauled gasoline we were legal, 4500 gallons.

The Court: What is the weight of gasoline?

The Witness: Gasoline weighs approximately six and one tenth pounds per gallon.

The Court: What is the weight of your vehicle, or tractor and tank as you call it?

The Witness: The tractor and tank will weigh in the neighborhood of 19,500 to 20,000 pounds.

The Court: That will give you roughly a total of 47,000 pounds.

(76) The Witness: That is right. The Pennsylvania weight law is 45,000 pounds gross weight with a five per cent tolerance, giving you a weight allowable in Pennsylvania without being subject to a fine of 47,250 pounds.

The Court: What other cargoes do you carry besides gasoline?

The Witness: Fuel oil, this heavy bunker oil, and we carried chemicals.

The Court: In the case of fuel oil and bunker oil, then a full load would exceed the weight limit?

The Witness: Was overweight, that is correct.

By Mr. Sarner:

Q. With respect to your operations in Pennsylvania, would you say that you had a considerable or inconsiderable amount of carriage of the bulk liquids other than gasoline?

A. We had carriage of it, but the majority of the heavier products were transported by leased carrier, which was Tank Truck Rentals, Inc.

Q. Now as a result of operating overloaded equipment in Pennsylvania, did your company, if you know, pay any fines to the Pennsylvania authorities?

A. Yes, we did.

Q. Would you say that your operation of overloaded equipment in Pennsylvania was in excess of the number of fines that you paid?

(77) A. Yes.

Q. Would you say it was considerably in excess or inconsiderably in excess?

A. I would say considerably in excess of what we actually paid.

Q. Just speaking about the number.

A. From the standpoint of the fuel oil which we hauled and the other chemicals, the heavier products, which were heavier than gasoline.

The Court: Can you make any reasonable estimate of the ratio of the number of times in which you had to pay fines as against the total number of actual violations?

The Witness: I would say a reasonable estimate would be 50 per cent of the loads which we moved would have been overloaded.

Mr. Sarner: That is not quite a response. I think you say 50 per cent of the number of loads were over weight.

The Court: Of those 50 per cent that were over weight, what portion of that resulted in fines?

The Witness: Well, a very minor portion. The fines which we paid in Pennsylvania totaled approximately 215 fines in 1951.

The Court: Can you make any estimate then as to the percentage of the fines as against the actual number of violations?

(78) The Witness: Well, the trips in Pennsylvania which we moved on our own equipment. It would have been about half a per cent.

The Court: In other words, for every two hundred violations you paid roughly one fine?

The Witness: That is right.

By Mr. Sarner:

Q. Now in speaking of violations as you were just speaking, Mr. Sechrist, were you referring to the maximum gross weight of 45,000 pounds plus the five per cent lee way, or did you have in mind some other aspect of the weight law?

A. I was speaking of the gross weight.

Q. Your fines which were imposed on the vehicles which were stopped in 1951, did they relate to the maximum gross weight or other violations of the weight laws?

A. They were related to the maximum gross weight.

Q. Turning to the other states which you have mentioned—such as New Jersey, Delaware, West Virginia, Virginia, and whatever ones you mentioned—do you know

approximately on how many trips in those states your vehicles were overweight?

A. We had four overweight violations in New Jersey, we had three in Virginia, and one in Ohio.

Q. Those were the number of fines, as I understand it, which your company paid?

A. That is right.

(79) Q. Do you know whether or not your vehicles were overweight on trips in those states during 1951 for which your company was not fined?

A. I know of no instances in which they were overweight and that we were not fined.

Q. So that to your knowledge, if I understand you correctly, these were the only times that there were any violations?

A. That is right.

Q. Is that true for New Jersey as well as the other states?

A. Yes, it is.

The Court: Would you explain how all of the violations in the other states resulted in fines, whereas only one out of two hundred resulted in fines in Pennsylvania? Was there stricter enforcement in the other states?

The Witness: Not necessarily. In the other states the maximum gross weight would run approximately 60,000 pounds. Whenever we could buy the equipment, of course we bought for those states that we traversed. Those states of course had this larger weight law and the equipment which we operated in those states was equipment which was behind for that weight.

The Court: I understand that. What I do not understand is why only one-half of one per cent of the violations resulted in effective law enforcement in Pennsylvania, whereas 100 per cent of the violations

resulted in effective law⁹ (80) enforcement in the other states.

The Witness: We didn't operate illegally in the other states. For example, let me clarify—

Mr. Sarner: May I state something, if I may, Your Honor, not as testimony but in clarification of that. I think that what has been testified to will show that insofar as these other states were concerned there were no violations, except a possible inadvertent violation where there might have been a temperature change or a combination of a truck tractor and trailer—

The Court: Even so, my question is how was it that the authorities in the other states were so on the alert that they caught up with every one of them, whereas in the State of Pennsylvania—

Mr. Sarner: There were no more violations in the states than the two or three that were mentioned. Their equipment was so designed that they would be within the permissible 60,000 pounds maximum gross weight. There were no violations there except a possible violation which was occasioned through no fault of the carrier.

The Court: That is not responsive to my question. I do not think it is the function of counsel to answer; the burden is on the witness. My question is addressed to the witness. Whether the violations in the other states are frequent or infrequent or advertent or inadvertent, my question expresses (81) some surprise that the enforcement authorities in the other states were so much on the alert that they were able to pick up every one of them, few as they were, whereas in Pennsylvania only one-half of one per cent of them were picked up. I would like some comment on that from the witness.

The Witness: Well, the only comment that I can make is that we were very much more aware of the loads going into, for example, New Jersey, Maryland, Virginia, and West Virginia because their fine structure is a little different. You subject yourself to a much heavier fine.

The Court: That explains to me why you complied with the law more often in those other states, but it does not explain why in those instances in which you did not comply the state enforcement authorities were able to catch up with you on every such occasion.

The Witness: Well, now, let me explain the New Jersey situation. We thought we were legal when we went into New Jersey. What had happened, they had switched a tractor which bore a Pennsylvania tag and should have had a New Jersey tag in order to be legal in New Jersey. In other words, we had a New Jersey trailer and we had a Pennsylvania tractor. It was an interstate movement so there was no objection to it. But the minute we got in New Jersey, because we had the Pennsylvania tag on the tractor made it subject to Pennsylvania law. It was legal under the New Jersey law but was illegal under the Pennsylvania law, and therefore (82) it was subject to a fine.

By Mr. Sarner:

Q. Getting back to the earlier question, Mr. Sechrist, insofar as the states other than Pennsylvania were concerned, do you know whether or not your company operated equipment which was overloaded under the laws of those states on more occasions than on those on which you were fined—the states other than Pennsylvania or New Jersey?

A. I know of no occasions.

Q. Would there be any reason for the company to operate overloaded equipment in those states?

A. No reason.

Q. Do you know, Mr. Sechrist, whether this use of overloaded equipment in Pennsylvania in 1951 by your company was just confined to your company as a prevalent practice in the industry?

A. It was a prevalent practice in the industry, as I have said; and they have always published the fact that there are a considerable number of fines in Pennsylvania, overweight fines.

Q. What were your company's reasons for consciously operating the overloaded equipment in Pennsylvania in 1951?

A. During the war period, the standard tank seemed to be 4500 gallons. Now I was not with the company during the war period, although I did sit in on the board of directors' meetings from the time I started with the company, and this feature (83) was discussed at those meetings by the officials of the company. The 4500 gallon tank then became more or less the basis for determining a rate structure and setting up rates. The minute that we would give any thought to going into smaller equipment, we became involved then with a reduced operating income with static cost.

Q. How did this reduced operating income affect your competitive position?

A. As long as the other operators were operating illegally we were at a disadvantage. They would show considerably more profit.

Q. Well, was any consideration given, to your knowledge, by the industry as a whole to increase the rates so that all the carriers in the industry could operate with smaller pay loads?

A. Yes, we discussed at our meetings as to the advisability of increasing rates.

Q. What was the conclusion reached?

A. Due to competition of the oil companies in the actual delivering of their own product and with the rails, we were unable to increase the rates and maintain the business.

Q. Were any conclusions reached with respect to the acquisition of smaller equipment in 1951?

A. Yes. We attempted to determine from the records whether it would be feasible to buy this smaller equipment. We were also faced with the inevitable decision that if we did that we (\$4) were not going to make enough operating income to offset the operating expenses.

Q. Did the role of the industry as a whole in relation to your company play any part in that decision?

A. Yes, as long as our competition maintained their same practice. It had been going on for the past number of years, and we had to continue.

Q. Did your interstate operations or your operations outside of Pennsylvania play any important part in your decision as to the size of equipment you had to have?

A. Definitely. Where we found out that in the surrounding states we could haul illegal loads with, say, a tandem axle trailer which hauled 5600 gallons, then we of course looked to that type of equipment since we were able to use it in the various states such as Ohio, West Virginia, Maryland, Delaware, and New Jersey. We tried to establish our identity on that equipment so when we moved around in those states we were legal. The only state in which we were illegal was Pennsylvania.

Q. Could you have purchased equipment which would have been legal in Pennsylvania and still have been usable in the other states?

A. Oh, it could have been purchased but it would have been very, very uneconomical and we would not have been able to stay in business at all if we had purchased equipment that was legal in Pennsylvania and then try to use it in another state.

(85) Q. Why could you not stay in business by doing that?

A. Well, the income would not be there, and then we are trying to compete with carriers in those other states that are hauling, for example, a 5600 gallon load; whereas

if we were hauling gasoline, we would be hauling a 1500 gallon load.

Q. Did you consider in 1951 the acquisition of permits to operate overloaded equipment in Pennsylvania?

A. There was talk of securing permits.

Q. What was the conclusion reached?

A. It just was not feasible to secure a permit which may take two or three days. The delay just would not warrant waiting for it. Most of our for-hire business, as it is called, they wanted the product possibly yesterday, but that makes it imperative that you are able to move immediately in the for-hire carrier business.

Q. In your consideration of the possibility of acquiring permits, did you consider the practice of the industry as a whole with respect to that matter?

A. Yes. No other industry did it.

Q. Would you have been able to do so? In light of what was done in the rest of the industry, would you have been able to secure permits?

A. No, we would have been delayed in trying to move the load.

Q. What effect would that have had on your business?

(86) A. We would have lost the business.

Q. Now turning to your relations with Tank Truck Rentals, Inc., in 1951, would you say they were or were not in competition with you?

A. They were definitely in competition with us. From the standpoint that when they failed to render the service at a price or at a return in revenue to us that would take care of our fixed expenses, then it no longer became feasible for us to use their service.

Q. Did your company discuss in 1951 or prior thereto, if you know, with Tank Truck Rentals, Inc., any proposal to increase rentals to compensate them for the increased cost of operating legal limit loads in Pennsylvania?

A. Yes, we discussed that with them. We decided that we could not give them any increase in rates, that the

amount which they were getting at that time was sufficient to take care of the business which they were doing, and if it went any higher, we would get equipment or get leased carriers elsewhere to do business.

Q. Do I understand, then, that it was the company policy that if an increased rate were required or demanded by Tank Truck Rentals, Inc., you would have made arrangements to lease similar equipment elsewhere?

A. That is right.

Q. What sanctions, Mr. Sechrist, were imposed on your (87) company by Pennsylvania in 1951 or prior years in Pennsylvania for operating the overloaded equipment?

A. The only sanction that was imposed upon us was the payment of the fine.

Q. No other sanction?

A. No other sanction. In fact, in most all of the cases we were notified several days later that there was an overload, and the fine could be paid then; it was not required to be paid on the spot.

Q. In Pennsylvania in 1951, do you know whether any of your overloaded vehicles were required by the Pennsylvania authorities to be unloaded in order to remove the excess weight before it could continue?

A. No, sir, none were required to be unloaded.

Q. With respect to the other states, do you know whether any were required to be unloaded?

A. There were none required to be unloaded since I have been with the company.

Q. With your company?

A. That is right.

Q. Do you know of any other sanction other than fines which were imposed on your drivers in 1951 for operating overloaded equipment?

A. No sanction imposed on them.

Q. Did you have any agreement in 1951 for 1951 Tank (88) Truck Rentals, Inc., with respect to the payment of

these fines which were imposed on the operation of their equipment?

A. They were responsible for all fines for overloading.

Q. Did you have any understanding or agreement with Tank Truck Rentals, Inc., that this matter was to be reimbursed to them in any part?

A. None whatsoever.

Q. Who paid the fines imposed in Pennsylvania for operating your own equipment in excess of the maximum weight limitations?

A. We paid the fines.

Q. Was the fine imposed literally on your company?

A. No, the fine was imposed upon the driver.

Q. May I ask why you paid the fine?

A. We have union contracts, similar to the contracts to which Mr. Kahley testified, with the Teamsters Union and in that contract they state that all fines for overloading are to be paid by the company.

Mr. Sarnier: No further questions.

CROSS-EXAMINATION.

By Mr. Armstrong:

Q. You said that the bulk of your heavy fuel oils, the bulk of those loads was carried by leased trucks, is that right?

A. That is right.

Q. That meant that the bulk of the load that you carried (89) was gasoline, is that right?

A. Gasoline, fuel oil.

Q. Then you had some?

A. We had some.

Q. Would you say about 75 or 80 per cent would be gas? Is that a fair estimate?

A. Oh, I imagine it would be closer to 60 or 65 per cent of them.

Q. Would be gas?

A. That is right.

Q. And the 35 per cent would be heavy fuel oil, would it?

A. No. We haul chemicals and coal tar products.

The Court: How do they compare in weight with gasoline?

The Witness: Well, your chemicals will vary in weight from a little less than six pounds to as high as fourteen pounds to the gallon.

By Mr. Armstrong:

Q. And there is no way of breaking that down to tell us in that 35 per cent how much is a light load as compared to the heavier materials?

A. Offhand I have no way of breaking that down, no.

Q. Now in the chemicals, that is special equipment which is a little different than the others?

The Court: Are those dry or liquid loads?

(90) The Witness: Those are liquid chemicals.

By Mr. Armstrong:

Q. Why did you lease vehicles to carry your heavy fuel oils?

A. The only reason that I know for us leasing for the heavy fuels is the requirement of a lot of equipment at one time to make the movement.

Q. Could you not have leased vehicles to move the gasoline just as well?

A. We could, but that is more of a steady movement throughout the year.

Q. Was it not because of this being subject to fines that caused you to lease vehicles to carry the heavy materials?

A. Not all together. That was not the controlling factor.

Q. It was a factor in it?

A. Yes.

Q. Now did you lease vehicles from other companies other than the Petitioner?

A. Yes, we leased from others.

Q. Did you pay the fines, if there were any, for the drivers of the other companies?

A. No, we didn't. The only fines which we paid were for our own drivers of our own equipment.

Q. On the loads of your fuel oils which were in excess of the maximum limitations in Pennsylvania, were they always done (91) consciously? Was your overloading conscious or was it inadvertent or what?

A. It was a conscious overloading. We hauled a full load of 4500 gallon.

Q. Did your tanks have compartments in them as Mr. Kahley testified to here today?

A. Some of the trucks were compartmented and others were a single compartment.

Q. So you could have loaded the trucks which had compartments in them and complied with the regulations?

A. They could have been loaded but we would not have been able to stay in business on the basis of loading only two compartments of the three compartments.

Q. You mean that particular load would have been uneconomical?

A. Oh, definitely. We would have been cutting off a third of the revenue.

Q. Now you said the Petitioner was in competition with your organization.

A. That is right.

Q. Actually the Petitioner could not haul on his own account because he did not have an Interstate Commerce Commission right?

A. He had to haul on our rights.

Q. He had to haul on somebody else's rights in every (92) instance?

A. That is right.

Q. He was not really a competitor?

A. He was a competitor from the standpoint from the amount we were charged.

Q. Now explain that.

A. If he tried to get the basis of the payment on the percentage of the revenue. Now if he wanted too much of that percentage of revenue, then we would go to some other licensed operator that we use and get them to do this business.

Q. Was the pay scale based on what the commodity was? In other words, did the pay scale depend on what the revenue was?

A. The revenue determined the pay.

Q. On a haul of gasoline did you pay more for the Petitioner's vehicles to haul your gasoline than you did for him to haul fuel oil per gallon?

A. It depended on what revenue was derived from that. It would be more or less.

Q. In other words, the payments you made to the Petitioner were a percentage of the revenue that you obtained from the load?

A. That is right.

Q. Did you get more from gasoline or from fuel oil?

A. Well, it just depends. There were some cases where the movement gave us less revenue and other cases where it gave us more revenue, depending on the rate structure.

(93) Q. You mean more revenue per gallon?

A. That is right.

Q. Well, that depended on the distance, didn't it?

A. Well, the distance and the rate structure. We operate the same as all other common carriers in competition with the for-hire carriers. Their rates are set up on a basis of what competition is. Now one place you might haul for the same distance and get less money and another because of depressed rate condition.

Q. Do you know approximately how many common carriers there were in Pennsylvania in 1951?

A. Of all types of common carriers, I don't know.

Mr. Armstrong: I have no further questions.

Mr. Garner: One further question.

RE-DIRECT EXAMINATION.

By Mr. Sarnier:

Q. In answering Mr. Armstrong about filling a tank partially, one with compartments, did your company consider the possibility of partially loading one of your tank semi-trailers?

A. Yes, we have considered it but it was too much of a hazard as far as the surge on the product. When the tank would stop all the product would have that much space to go forward in the tank and would tend even though the tractor had stopped momentarily, this surge of the product going forward would push the entire unit ahead.

(94) Q. So that from a safety factor, and you said a competitive factor—

A. Yes. It also had a tendency to put a great deal of strain on the metal with that surging back and forth. It could be possible in liquids such as those, which are considered dangerous commodities to handle, that it is a bad safety factor.

Mr. Sarnier: Nothing further.

RE-CROSS EXAMINATION.

By Mr. Armstrong:

Q. That would not be true if you were using compartmented tanks; in other words, if you filled two compartments?

A. If there were two compartments and those compartments were full, it would not be in there, that is right.

Mr. Armstrong: No further questions.

(Witness excused.)

The Court: There will be a short recess.

(Whereupon, a short recess was taken.)

Mr. Sarnier: Mr. Niness, please.

Whereupon,

S. F. NINESS was called as a witness on behalf of the Petitioner and, having been first duly sworn, testified as follows:

The Clerk: State your name and address for the record.

The Witness: S. F. Niness; 520 East Lancaster Avenue, Downingtown, Pennsylvania.

(95) DIRECT EXAMINATION.

By Mr. Sarnoff:

Q. Mr. Niness, what is your occupation, please?

A. I am president of the Leeman Transportation Company, Leeman Transportation Corporation, and Chemical Transportation.

Q. That is what type of business?

A. Transportation of liquids.

Q. Do you do inter- or intrastate business, or both?

A. Both.

Q. In what states do you principally operate?

A. Principally New York, Pennsylvania, New Jersey, Delaware, Maryland, West Virginia, and Ohio, and into about eighteen other states.

Q. Mr. Niness, have you had any governmental service?

A. Yes, sir.

Q. Will you tell us what that has been?

A. In 1941 I went to Washington with Mr. Ickes, Department of the Interior, to make a survey of the tank trucks on the eastern seaboard. In 1942 I went to Washington as chief of the Petroleum Section of O. D. T. Later I became director of that division.

Q. As director of this Petroleum Section of O. D. T., what were your duties and responsibilities?

A. It was our function to put as many loads of petroleum products and liquid products onto tank trucks, to tankers, to (96) move petroleum from the Southwest and

later on from the end of the Big Inch Pipe Line, Illinois, to to the eastern seaboard.

Q. How long were you connected with that governmental service?

A. To the duration of the war.

Q. In your capacity as director did you have any responsibility with respect to the manufacture of tank trucks during the war years?

A. Not the manufacture, but the War Production Board assigned to us the task of allocating first all the new tanks, all the new trucks, tractors, that had been built and frozen by the Government at the beginning of the war. We allocated those tractors out as we saw fit. We also advised the War Production Board—Mr. Nelson was in this group—as to the size of the tank trailers that should be built during the war which should be uniform throughout the country and which would save steel and rubber.

Q. And what were your recommendations with respect to that matter?

A. We recommended that we would build, should build, tanks of 4,500 gallons to 5,000 gallon capacity which would take in the majority of the country, and also single compartment units to save steel.

Q. Were multiple compartment units manufactured during the war years?

(197) A. No, sir.

Q. With respect to the operations of your company, Mr. Ninness, we did you say that your own company operates substantially the same or differently from those similarly situated in the industry?

A. The same.

Q. Are you familiar with Coastal Tank Lines and Matlock, Inc.?

A. I am.

Q. What type of business are these companies engaged in?

A. Transportation of liquids.

Q. Now in the states which you have mentioned in which your company operates, who would you say are the companies which do the largest amount or volume of business in these states in this transportation of bulk liquids?

A. As far as New York, Pennsylvania, Delaware, Maryland, and West Virginia, I would say that Leeman Transportation Company, Matlack, Inc., and Coastal Tank Lines, in that order, do the largest of any companies in the country.

Q. You are familiar with the type of equipment which your company had in 1951?

A. Yes, sir.

Q. And you are familiar with the equipment which was used and operated generally in the industry in that year?

A. Yes, sir.

(98) Q. What was the capacity of the tank which was used industry-wide in that particular year?

A. From 4,000 to 5,000 gallons; the 4,000 being bought prior to the war. During the war all you could buy were the four to five thousand gallon capacity. After the war of course the manufacturers still made and operators bought the larger sized tanks.

Q. In 1951, Mr. Ninness, if you know, were any semi-trailer tanks engineered of a lighter metal than iron or steel?

A. No, sir.

Q. Did your company conform to the industry practices with respect to the operation of equipment in Pennsylvania in 1951?

A. You mean that load the tanks to capacity?

Q. Yes.

A. Yes, we did.

Q. And on all types of fuel which your company carried?

A. Yes. We used our smaller tanks where we could and the heavier products, but we load those tanks to capacity.

Q. Did you consider the possibility of acquiring smaller tanks in 1951 in order to conform to the weight limitations of the Pennsylvania statute?

A. Yes, we did; and we acquired some in 1951.

The Court: What was the size of the smaller tank?

The Witness: Four thousand gallons.

By Mr. Sarner:

Q. With respect to the bulk of the fleet, what was the (99) size of the tanks?

A. Forty-five hundred to five thousand.

Q. Was it true with your company, as was testified to by the other two witnesses, that the equipment had to be available for use in the various states?

A. Yes, sir. You have to operate in all surrounding states at the call of the oil companies because they change their point of origin from day to day, and we have to follow the product around.

Q. Would you say it was a widespread industry practice to operate overloaded equipment in Pennsylvania in 1951?

A. Yes, sir.

Q. Was the equipment which was in general use in the industry in 1951 suitable for Pennsylvania as such?

A. Not legally.

The Court: That would depend on the load, would it not?

The Witness: Yes, sir. If you carried gasoline, it would be legal. If you carried 4,000 gallons of No. 2 or No. 4 or No. 5 fuel oil, you would be legal. You might be a little over on a size of your tractor with a 4,000 Bunker C or No. 6 oil. It depends on specific gravity of the oil and the heat of the oil.

By Mr. Sarner:

Q. Did you consider the possibility of not loading the (100) tanks to capacity and operating in Pennsylvania?

A. We did. Many times we cut it down to stop the fines because we didn't want to be illegal, didn't want to be held as an illegal company. But then competition crept in and you had to get back in it again.

Q. Was there any safety factor?

A. It is not safe to operate a tank partially filled.

The Court: Is that a substantial hazard or one that you do not take too seriously?

The Witness: It is serious enough, sir, because there is a surge; you can't get away from it. Another factor is that when you go around on a turn liquid tends to go to the far side of the truck.

By Mr. Sarnier:

Q. Centrifugal force?

A. Yes. You can overturn the truck if you go around turns too fast with a partially loaded truck.

Q. Did your company consider the possibility of acquiring permits for operating equipment in Pennsylvania?

A. Yes, sir.

Q. What were the conclusions reached?

A. It was not worth it because, number one, they do not want to issue them. They don't issue for continuous loads; they only issue them for special heavy occasional loads.

Q. In addition to the fact that it would have been difficult (101) to obtain permits, were there any other considerations?

A. There was a cost factor, but the other factors would not let you get into the cost factor because the state did not want you to do it and that was it.

Q. Do you know whether the industry as a whole sought out permits?

A. Not the industry, because over the road dry cargo or wet cargo the industry has heavy duty machinery.

Q. Felt talking about bulk liquid carried.

A. No, sir.

Q. They did not?

A. No, sir.

Q. Did you discuss in 1951 with Tank Truck Rentals any possibility of increasing their percentage revenue for operating a lesser pay level?

A. Yes. It was discussed, but that is as far as it got because we just could not do it.

Q. Did the industry as a whole, to your knowledge, discuss the possibility of seeking an increase in the rates to compensate for operating at a reduced pay level?

A. Yes, that was discussed, but you cannot do it because if you did the consignees would put their own trucks on or use rail because the rates are practically the same.

Q. What sanctions, if any, Mr. Ninness, were imposed on your company with respect to the operation of overloaded equipment (102) in 1951 in Pennsylvania?

A. What do you mean by "sanctions"?

Q. Fines or anything else which the company incurred.

A. Oh, yes, we were fined in 1951. That is why we started to buy smaller equipment.

Q. Do you know whether in 1951 any of your drivers were forced to remove the excess load in Pennsylvania?

A. No, sir.

Q. You do know?

A. I do not know of any case ever requested to take off the excess load.

Q. Is that true in Pennsylvania only, or is that true in other states?

A. Well, we never had an experience that I know of of taking a load off in Pennsylvania in the history of our company. We have removed a load in Virginia at one time which was loaded by mistake and we had to take the load off.

Q. Insofar as the industry practice is concerned, Mr. Ninness, would you say that the operation of overloaded equipment was prevalent in states other than Pennsylvania?

Mr. Armstrong: I object to that as a leading question, Your Honor. Counsel has been leading the wit-

ness all day. I think it is up to the witness to testify and not for the counsel to lead.

Mr. Sarner: Well, I am just asking——

(103) The Court: That question may be answered.

The Witness: I would say no because of the fact that the states surrounding Pennsylvania all have 60,000 pounds gross weight and it was not necessary to overload. In fact, the tanks would not hold enough to overload, at least the tanks we had.

By Mr. Sarner:

Q. Mr. Ninness, in connection with the fines which were imposed, who paid those fines?

A. The company.

Q. Can you tell us the reason why the company paid those fines?

A. Well, we are not organized by any of the bigger unions. We have our own association, but we have always paid our overweight fines because that is not a part of the driver's responsibility. If the loader overloads the truck or if we overload the truck, that is our business, not his.

Mr. Sarner: No further questions.

CROSS-EXAMINATION.

By Mr. Armstrong:

Q. You say 4,000 gallon trucks were available in 1951?

A. Yes, you could purchase them.

Q. And you had some in your organization?

A. We had some from before the war, and we bought some in 1951, yes, sir.

Q. Do you have any idea how many you had in 1951?

(104) A. A very small percentage because they don't last too long. As you know, they don't last forever and I would say that——

Q. Comparatively speaking, to the rest of your fleet.

A. I would say 10 per cent of our fleet was 4,000 gallon, probably.

Q. You mentioned No. 2, No. 4, and No. 5 oils.

A. They are fuel oils, yes.

Q. They were lighter or heavier?

A. They are heavier than gasoline but lighter than Bunker C or No. 6.

Q. Would they be under seven pounds per gallon?

A. No, sir. They start at 6.8 and go up to eight pounds per gallon.

Q. Did you lease any vehicles in your operations?

A. Some, not many. We didn't at that time lease too extensively. We leased for Tank Truck Rentals.

Q. In 1951?

A. Yes, sir.

Mr. Armstrong: I have no further questions.

Mr. Sarner: One further question.

RE-DIRECT EXAMINATION.

By Mr. Sarner:

Q. Did you have any understanding or agreement with Tank Truck Rentals with respect to the payment of fines which were (105) imposed on Tank Truck Rentals for operating the overloaded vehicles?

A. No.

Q. Whose responsibility was that?

A. That was theirs.

Q. Did they have any agreement to reimburse them?

A. No, sir.

Mr. Sarner: No further questions.

(Witness excused.)

Mr. Sarner: Mr. Zook, please.

Whereupon,

C. W. ZOOK was called as a witness on behalf of the Petitioner, and having been first duly sworn testified as follows:

The Clerk: State your name and address for the record.

The Witness: C. W. Zook; Thirty-third and Arch Streets, Philadelphia 4, Pennsylvania.

DIRECT EXAMINATION.

By Mr. Sarger:

Q. What is your occupation, Mr. Zook?

A. I am Traffic Manager for E. Brooke Matlack, Inc.

Q. In what business is E. Brooke Matlack, Inc., engaged?

A. In the transportation of liquids.

Q. By—?

A. Tank trucks.

(106) Q. How long have you been engaged in this type of business?

A. Since 1936, and with this company since 1942.

Q. In what capacity were you employed in 1951?

A. Traffic Manager.

Q. What was the nature and extent of your duties and responsibilities as such officer?

A. I was in charge of the transportation.

Q. You are familiar with the types of equipment which your company owned and operated in 1951?

A. Yes, I am.

Q. Was that similar or dissimilar to the equipment used and operated generally in the industry in that year?

A. It was similar.

Q. What type of equipment is that?

A. It consists of a tractor and semi-trailer tank.

Q. Were the capacities of your tanks similar or dissimilar to that which was generally in use in that year?

A. Similar, yes.

Q. What were the capacities?

A. They varied from four to five thousand gallons.

Q. Did your practices with your company conform to the practices which were prevalent in the industry with respect to the operation of overloaded equipment in 1951?

A. I think so.

The Court: In other words, you loaded your equipment (107) to full capacity?

The Witness: Yes, sir.

The Court: Your equipment loaded to full capacity resulted in overweight, depending upon what the cargo was?

The Witness: That is true; yes, sir.

By Mr. Sarner:

Q. Was this true, Mr. Zook, for purposes of your company with states other than Pennsylvania?

A. With respect to loading them full?

Q. And with respect to being overweight.

A. Well, in the other states when the tanks were loaded full they were not overweight.

Q. Then do I understand you correctly that therefore your overloading was restricted to Pennsylvania?

A. Yes.

The Court: Would that not also depend upon the nature of the load or cargo?

The Witness: Not in the other states, sir. Not to my knowledge, anyway.

By Mr. Sarner:

Q. Why is that, Mr. Zook?

A. Well, the 5,000 gallon tanks when they were loaded to capacity would not exceed the 60,000 pound gross in the other states.

Q. That would be true even for your Bunker C which we might say weighs eight pounds a gallon?

(198) A. It didn't usually move in that quantity. It usually moved in 4500 gallon quantities.

Q. Did your company consider the possibility of acquiring smaller tanks and equipment in 1951?

A. Yes.

Q. What was the conclusion reached with respect to that?

A. A small number of them were purchased.

Q. Would it have been possible to purchase more than a small number?

A. Well, to convert the whole fleet it would have been possible, yes, sir, but that was not practical.

Q. Well was it practical, Mr. Zook, to have equipment, say, of 4,000 gallons for use in your operation?

A. Well, we didn't consider it practical, no, sir. But we did it in order to try to comply.

Q. Did your interstate operations play any part in your decisions as to what type of equipment you could use and operate in 1951?

A. Yes.

Q. What was that?

A. Most of our equipment, in fact, all of our equipment was purchased so it could be interchanged between the states. The only state that we were in any trouble was Pennsylvania. All the other states allowed gas approval, lately 60,000 pounds.

Q. Could you have purchased equipment solely for use in (199) Pennsylvania?

A. No, that is not very practical, either because the equipment has to be interchanged. A good portion of our work is into the states that surround Pennsylvania, and it is not practical to use the smaller type tank.

Q. Was the experience of your company in 1951 substantially the same as that testified to by those other companies with respect to the payment of fines for operating overloaded equipment?

A. Yes, it is.

Q. By that, would you say that the fines imposed on your company in Pennsylvania were greater or lesser in number amount than imposed in other states?

A. Greater.

Q. Would you say substantially or not substantially?

A. Very substantially greater.

Q. Did your company consider the possibility of acquiring permits to operate overloaded equipment in Pennsylvania in 1951?

A. Yes, we did.

Q. What was the conclusion reached?

A. That is not a very practical way to operate, either. First of all, the permits are discretionary so far as Pennsylvania is concerned, and I am sure it was not the intent to continue to issue permits for the same piece of equipment day in and day out.

(110) Q. Do you know whether the industry as a whole sought permits on bulk liquid loads which the industry carried out to Pennsylvania authorities?

A. No, they didn't get them, sir. Whether they sought them, I don't know.

Q. Did your company have any experience with that?

A. We got one permit, but that was not to haul a load of liquid; it was for another commodity.

Q. Did you have any business dealings with Tank Truck Rentals in 1951?

A. Yes, we did.

Q. And by that will you explain what arrangements you had with them?

A. We had a lease arrangement with them wherein they took care of our peak loads during certain times of the year 1951.

Q. Did you have any agreement with them with respect to the responsibility for the payment of fines which might be imposed on the operation of any of Tank Truck Rental Inc.'s leased equipment?

A. There was no specific agreement, no, sir.

Q. Whose responsibility was that?

A. Theirs.

Q. Do you have any arrangement to reimburse them for any of these sums?

A. No, sir.

(111) Q. With respect to the fines which your company may have paid in 1951 to the State of Pennsylvania for operating overloaded equipment, were those fines imposed directly on the company?

A. No, they were imposed upon the drivers.

Q. Why did the company undertake to pay them?

A. In at least one of our contracts with our men that is specifically covered in the contract, and then it followed all the rest of the men should be similarly treated.

Q. In the experience of your company in 1951, were any sanctions other than fines imposed for operating the overloaded vehicles in Pennsylvania?

A. No, sir, not in Pennsylvania.

Q. Do you know with your experience in any of the other states in your company?

A. Not if I—

Q. Let me make that a little more specific. Do you know whether any vehicles of your company were required to be unloaded in any of the other states because of excess weights?

A. I know of one such occasion, and that was a mistake. We did have to partially unload.

Q. That was not in Pennsylvania?

A. That was in Maryland.

Q. Do you know of any sanctions other than fines which were imposed on the drivers for operating the overloaded equipment, (112) such as arrest or imprisonment or suspension of operator's license?

A. There were none.

Mr. Sarner: No further questions.

CROSS-EXAMINATION.

By Mr. Armstrong:

Q. What did you have Tank Truck Rentals, Inc., haul for you, Mr. Zook, heavy liquids or light liquids, or both?

A. Both.

Q. Did I understand you to say in the 5,000 gallon trucks you normally carried 4500 gallons?

A. I misunderstood you, sir.

Q. In your testimony a little while ago did I understand you to say in the 5,000 gallon tanks that you would normally carry 4500 gallons of pure oil?

A. Well if I said that, I certainly didn't mean it.

Q. That is not the fact?

A. That is not the fact, no, sir.

Q. Did you say you had some 4,000 gallon tanks?

A. Yes, sir.

Q. Approximately how many did you have compared to your other trucks?

A. It was a very small number, sir. I don't know if it would reach 10 per cent or not; I doubt it.

Q. Perhaps less than 10 per cent?

(113) A. Perhaps, probably.

Q. Probably.

Mr. Armstrong: I have no further questions.

Mr. Garner: No further questions.

(Witness excused.)

Mr. Garner: Mr. Krathen, please.

Whereupon,

MORRIS KRATHEN was called as a witness on behalf of the Petitioner and, having been first duly sworn, testified as follows:

The Clerk: State your name and address, please.

The Witness: Morris Krathen; 1234 June Road, Huntington Valley, Pennsylvania.

DIRECT EXAMINATION.

By Mr. Sarnet:

Q. What is your occupation, Mr. Krathen?

A. I am a C. P. A.

Q. How long have you been engaged in the practice of accounting?

A. Approximately fifteen years.

Q. How long have you been a certified public accountant?

A. Approximately five years.

Q. What is your formal education?

A. I attended Temple University and the University of Pennsylvania.

(114) Q. Are you a member of any professional societies?

A. Pennsylvania Institute of C. P. A.'s.

Q. Do you specialize in any particular field of accounting?

A. I do, in motor transportation work.

Q. How long have you practiced this specialty?

A. Approximately ten years.

Q. Do you know approximately how many motor truck carriers are your clients?

A. I would say about fourteen.

Q. Do you know, Mr. Krathen, whether or not your reports are required to be filed by these carriers periodically with the Interstate Commerce Commission or with the state public utility commissions in the various states?

A. Yes, they are.

Q. Have you or have you not prepared any of these reports for clients for the year 1951 or prior years?

A. I have.

Q. Do you know what the nature and purpose of the reports are?

A. These reports are prepared in compliance with requirements of both the public utility commissions of the various states and the Interstate Commerce Commission for reporting purposes to them and to be used for promulgation of rates.

Q. Mr. Krathen, are you familiar with the Uniform System (115) of Accounts promulgated by the Interstate Commerce Commission for Class 1 common and contract motor carriers?

A. Yes, sir, I am.

Q. Do you know the purpose of this Uniform System of Accounts? Just do you know?

A. Standardized reporting information submitted by each of the carriers to the Interstate Commerce Commission.

Q. Now, Mr. Krathen, in your examination of the books and records of your motor carrier clients, did you or did you not find amounts paid by these carriers to the various states as fines for operating overweight vehicles?

A. Yes, sir, I did.

Q. Was payment of these fines included on any of the reports which you filed on behalf of the clients with the Interstate Commerce Commission or interstate regulatory bodies in 1951?

The Court: I wish to register an objection to this line of questioning as having no bearing on the issue here. What happened with respect to Interstate Commerce Commission reports which were used for the purpose of rate fixing seems to me to have no bearing upon the issues here in this case.

Mr. Sarner: If Your Honor please, we stipulated in our supplemental stipulation that the Pennsylvania Public Utility Commission adopts and uses the same accounting practices and interprets words and prescribes the Uniform System of Accounts (116) the same as the Interstate Commerce Commission. We think that if we can show that one public regulatory body of Pennsylvania, the State of Pennsylvania as well as the Interstate Commerce Commission treats these fines for overloaded vehicles as an operating expense in fixing rates and revenue for these carriers, that this is an indication that the public policy of the various states as not being of Pennsylvania is not to be frustrated by allowing this type of expense also to be treated as a legitimate ordinary and necessary business expense for tax purposes.

I think that is of importance to the court to appreciate that insofar as the realm of public policy is concerned, other bodies which are concerned with responsibilities in that field have treated these fines as legitimate. It is not controlling, but I think it should be before the court for the weight it has.

The Court: These questions have only to do with the reports that are filed, not with the rates that are determined upon the basis of these reports.

Mr. Sarner: Well, we will demonstrate that these reports are used for rate making purposes and the accounts—

The Court: They may be used in the sense they are considered, but just how much weight is given to each particular item in a report is something that I do not know we can go into. We cannot go into a rate hearing.

Mr. Sarner: We aren't, but I think it is relevant for (117) the court to understand and to know that under the public utility—

The Court: I will let you put it in. However, before I can give any substantial weight to it, I will have to have you show me on brief just how I have to consider on the face of it. It seems to me that you are getting pretty remote.

Mr. Sarnier: All right. I will undertake that burden.

Mr. Armstrong: I don't know that this witness is going to be competent to testify as to what weight is given to this matter by the Interstate Commerce Commission.

The Court: He is being asked now what is in the reports. He prepared the reports, so I presume he can answer.

Mr. Sarnier: Will you read the last question?

(The pending question was read by the reporter.)

The Witness: The lines were included as an operating expense in these various reports filed.

By Mr. Sarnier:

Q. Was there any particular account number under the Uniform System of Accounts to which you placed these lines in the reports in 1954?

A. Yes, sir, in Account 4280.

Q. Mr. Krathen, I show you Exhibit 11 which has been marked for identification and ask if you can tell us what that is, please.

A. Yes, sir. This is the Uniform System of Accounts for (118) Class 1 common and contract motor carriers of property.

Q. Will you turn to Account 4280?

The Court: That is included in the supplemental stipulation, is it not?

Mr. Sarnier: Yes, sir.

The Court: Paragraph 2 of the supplemental stipulation?

Mr. Sarnier: That is right.

Will you mark this as Petitioner's Exhibit No. 12 for identification.

(Petitioner's Exhibit No. 12 marked for identification.)

By Mr. Sarnier:

Q. Mr. Krathen, I show you Exhibit No. 12 which has been marked for identification and ask if you can identify this.

A. This is a form of an annual report submitted annually to the Interstate Commerce Commission by the various carriers.

Q. And for what year is that report?

A. For the year ended December 31, 1951.

Q. That is a blank report, is it not?

A. That is so.

Q. Where on that report would fines for operating overloaded vehicles be shown?

A. It would be shown in Account 4280.

Mr. Armstrong: I think that has been stipulated. Your (119) Honor.

Mr. Sarnier: That particular item has been stipulated. I would like to offer these two exhibits, Exhibits 11 and 12, into evidence.

The Court: They are accumulative, but I will admit them.

(Petitioner's Exhibits Nos. 11 and 12 received in evidence.)

By Mr. Sarnier:

Q. Do you know whether any examination and review was made by the employees of the Interstate Commerce Commission of the annual reports which you filed on behalf of your clients?

A. Yes, sir, they are reviewed in Washington and also by a field accountant by comparing with the original books and records of the companies.

Q. Was this the practice and procedure in 1951, if you know?

A. It was.

Q. Do you know whether any adjustments or changes are made either by the examining officer or by the reviewing authorities in Washington with respect to items which you show on your reports?

A. Yes, there are adjustments made. For instance, on those referred to by Washington there may be some statistical information which is either lacking or which bears some further (120) consideration, or upon a field examination certain items may be changed from one expense category to another, or capitalizing of some expense by the field agent.

Q. Now with respect to your treatment of fines for operating overloaded vehicles as a 4280 expense, to your knowledge was there any change made in 1951 or prior thereto with respect to your treating this as an Account 4280 item?

A. No, sir, there were no changes made to my knowledge.

Mr. Sarner: No further questions.

Cross-Examination.

By Mr. Armstrong:

Q. Would you also know if changes were made in your reports by the examiners?

A. Generally so. Our clients are accustomed to turning over only matters pertaining to the accounting to our association or our group, and that would be included. Such as they would refer any changes in the books or records, that we would be in a position to determine whether those changes would be proper or not.

Q. You are assuming that the field examiner would notify the person who filed the report. You say that person would then notify you?

A. That is right.

Q. But in every case the field examiner would notify the person filing the report?

(121) A. Yes, sir, he would. He leaves a Form C which is a notice to the company of certain improper accounting violations or improper accounting practices that each company then has to change its method or manner of accounting to conform to that.

Q. Assuming that the Interstate Commerce Commission allows the item to stay in the reports in the place that you have just mentioned, you do not know what weight is given that matter or that particular item by the Interstate Commerce Commission, do you, in fixing its rates?

A. No, sir, I do not.

Q. That is considered by them, and how they evaluate it you know nothing about, is that true?

A. That is true.

The Court: If there were any fines for the use of faulty equipment, would such fines similarly come under Account 4280?

The Witness: They would.

The Court: For traffic violations, exceeding speed limits?

The Witness: Yes, sir, they would be included in Account 4280.

By Mr. Armstrong:

Q. Have you ever known of any instance in which the field examiner rejected your including or any of your clients including fines for overloading vehicles in 4280, the traffic violation section?

(122) A. No, sir. To my knowledge they have never been changed for that reason.

Mr. Armstrong: I have no further questions.

RE-DIRECT EXAMINATION.

By Mr. Sarner:

Q. Mr. Krathen, is there under the Uniform System of Accounts any distinction made between operating expenses on the one hand and other deductions on the other?

A. Yes, sir, there is.

Q. Now in answer to Judge Raum's question about operating faulty equipment, you indicated that that would be in Account 4280. I call your attention to Account 7500 and ask you whether you maintain the same answer to the Judge.

A. May I read this?

Q. The appropriate provision, yes.

A. Under Section 7500 it states: "Penalties and fines for violations of law except for violations of traffic regulations which are provided for in Account 4280—Other Transportation Expense." I believe that I have testified that to my knowledge all those that have been charged in Account 4280. I am familiar with this provision in here. To my knowledge the companies have been charged to Account 4280 and they have remained there.

Q. You are talking about fines for faulty equipment?

A. That is right.

(123) Q. But Account No. 7500 is what type of account?

A. That is an account. It is another deduction which is not to be considered in arriving at net income from carrier operations. That is below the line Expense.

Mr. Sarner: No further questions.

Mr. Armstrong: No further questions.

(Witness excused.)

Mr. Sarner: I have one more witness, Your Honor. It will take no more than five minutes.

Mr. Kesel, please.

Whereupon,

FRANK J. KESEL was called as a witness on behalf of the Petitioner and, having been first duly sworn, testified as follows:

The Clerk: Please state your name and address.

The Witness: Frank J. Kesel; Radnor; Pennsylvania.

DIRECT EXAMINATION:

By Mr. Sarner:

Q. What was your occupation in 1951, Mr. Kesel?

A. Field accounting examiner for the Interstate Commerce Commission.

Q. What was the territory which was under your jurisdiction?

A. Pennsylvania, Maryland, District of Columbia, and Delaware.

(124) Q. How many field examiners similar to you were employed by the Interstate Commerce Commission in 1951?

A. I think there were about sixteen in 1951.

Q. What was the nature and extent of your duties as such field examiner?

A. Well our duties, of course, in connection with the new Class 1 carrier was to see that the accounting system was adopted and installed properly.

Q. And with respect to existing carrier?

A. Existing carrier. And I was to examine the annual report against the books of account to see that they agreed and that the items were distributed properly and reported in the annual report correctly.

Q. Now there is a distinction made under the Uniform System of Accounts between operating revenue and operating expenses on the one hand, and other income and other deductions on the other.

A. Well, operating revenue was revenue derived from transportation, and of course operating expenses, for ex-

penses in connection with the operating of the vehicles and the transportation business. Now other operating expenses and other operating revenue may be from sources not having any relation to the transportation business.

Q. Did you say other operating revenue, or other revenue?

A. Other revenue.

(125) Q. Do you know why that distinction is made between operating revenue on the one hand, and other revenue and expenses on the other?

A. Because the items of non-operating expenses were not taken into consideration at rate hearings with the Commission.

Q. Now in the examination of the books and records of the Class 1 motor carriers within your jurisdiction, Mr. Kesel, in 1951 did you find any record of payments for fines for operating overloaded vehicles by those carriers?

A. Yes, sir.

Q. In what account did you place those fines?

A. We were not very much interested whether it was a fine in connection with an overloaded vehicle or for exceeding the speed limits, see, or for passing a red light. It was a payment to a Justice of the Peace.

Q. And in what account was that placed?

A. It was charged to Account 4280, Other Transportation Expenses.

Q. That is an operating expense, is it not?

A. That comes under Transportation Operation.

Q. Now had there been a fine paid for having faulty equipment, to what account would that be placed?

A. If it is a violation of the safety regulations which would come under the heading of faulty equipment such as brakes, see, which would be a fine assessed by a judge, see, that would (126) be charged to Account 7500.

Mr. Sarnier: No further questions.

CROSS-EXAMINATION.

By Mr. Armstrong:

Q You say, Mr. Kesel, if the fine were assessed by a judge, it would be in Account No. 7500?

A. Well there may be violations by a motor carrier, see, such as operating without authority; violation of the safety regulations; not assessing the property rates; rebates and things of that type, see. That is a regular case that comes before a United States District Court, see; and the motor carrier has an opportunity to plead guilty or not guilty; and it is a trial.

The Court: If there is a trial and there is a multiple charges—say there is a charge for going through a red light, a charge for speeding, and thirdly a charge for faulty brakes—and separate fines are imposed for each one of these three violations, would you put one of the fines under 4280 and the others under 7500?

The Witness: Pardon me, but the only trial would be a fine of a Federal Judge, would be a fine of the Interstate Commerce Commission.

The Court: I am not talking about a Federal Judge, I am talking about a state violation.

The Witness: The state cannot fine a motor carrier for safety, see. That is an Interstate Commerce Commission (1327) regulation.

The Court: Is it your testimony that a truck that drives with faulty brakes cannot be subject to fine under state law for having faulty brakes?

The Witness: That we fellows have nothing to do with, but the Interstate Commerce Commission has the safety regulation that the motor carriers must comply with.

The Court: I am not talking about the Interstate Commerce Commission regulations, I am talking about

a violation of a state law by reason of having faulty brakes.

The Witness: That was all charged to Account 4280. That is a traffic violation.

The Court: And that violation that you are speaking of, that went under Account 7500 which are violations of regulations of the Interstate Commerce Commission itself?

The Witness: The Motor Carrier Act.

The Court: Yes.

The Witness: Not the Interstate Commerce Commission.

The Court: But as far as violations of state safety laws are concerned, penalties in that regard would be included under 4280?

The Witness: Account 4280.

By Mr. Armstrong:

Q. Do you have anything to do with rate hearing or rate fixing?

(128) A. No, sir.

Mr. Armstrong: No further questions.

Mr. Sarnier: That is all, Your Honor. Thank you, Mr. Kesel.

(Witness excused.)

Mr. Sarnier: That is the taxpayer's case, Your Honor.

(131) Mr. Armstrong: Mr. Forsyth, please. Whereupon,

ANDREW FORSYTH was called as a witness on behalf of the Respondent and, having been first duly sworn, testified as follows:

The Clerk: State your name and address, Mr. Witness:

The Witness: Andrew Forsyth, 2065 Maplewood Avenue, Abington, Pennsylvania.

DIRECT EXAMINATION.

By Mr. Armstrong:

Q. Mr. Forsyth, where are you employed?

A. At the present time I am employed in what is known as District 60 for the State of Pennsylvania.

Q. And where is that district located?

A. That is located at 449 Montgomery Avenue, Haverford, Pennsylvania.

Q. What is your position?

A. My position since the early part of 1951 has been District Permit Engineer for that district, which comprises Bucks, Delaware, Chester, Montgomery, and Philadelphia Counties.

Q. Prior to 1951, what was your position?

A. From the latter part of 1946 until the early part of 1951, (132) I was Acting District Permit Engineer.

Q. Prior to 1946 were you employed by the Highway Department?

A. I was.

Q. How long a time was that?

A. I have been employed since 1932.

Q. Now in 1951 what were your duties?

A. My duties were to check on all applications for special hauling permits and for what we call occupancy permits. Now we have quite a large number of hauling permits which would be for loads in excessive weight, width, height, or length.

Q. Would those permits be issued for hauling originating in this area, or just what is the situation?

A. We would issue permits for loads originating or stopping anywhere within this District 60.

Q. How about loads passing through?

A. For loads passing through, if we had a load starting in Philadelphia and going clean to the Pennsylvania-Ohio line, we would give them a permit; or if a load starting at the Pennsylvania-Ohio line come into any county in this district, we would give them a permit.

Q. It has been stipulated that in 1951 the statutory maximum gross weight allowed for truck-tractor and semi-trailer combinations on the Pennsylvania highways was 45,000 pounds. Do you know what the policy of the State of Pennsylvania was in 1951 (133) with respect to loaded vehicles whose gross weight exceeded this amount to use the highways?

A. Yes, I do.

Mr. Sarnier: If Your Honor please, I do not think the witness is qualified to testify to the policy in Pennsylvania. He might testify to the policy with respect to District No. 60, but I don't—

Mr. Armstrong: May I qualify this?

By Mr. Armstrong:

Q. Mr. Forsyth, your rules and regulations that you were enforcing in this district were the same as in the other districts of the state?

A. To the best of my knowledge, they were.

Q. Were you enforcing the laws of Pennsylvania with respect to permits?

A. That is right.

Mr. Armstrong: Then, Your Honor, I believe this witness is competent to answer the question.

The Court: He may answer it.

The Witness: What was the question?

The Court: The Petitioner may later cross examine him to weaken the effect, but I think the witness may answer.

By Mr. Armstrong:

Q. I will repeat the question. What was the policy of the state in 1951?

(134) A. Well, the policy of the state is never to issue permits for any load for excessive weight where they can take off enough material to reduce that load to our gross weight of 45,000 pounds. Sometimes we have applications for permits which we call built-up loads on which they would want a permit for a load in excess of 45,000 pounds. We are not permitted to give permits if that load can be reduced to the legal limits of 45,000 pounds.

Q. Was that true in 1951?

A. Yes, sir, it was.

Q. And when you say "if the load could be reduced" take, for example, a truck hauling gasoline. Would you say that that load could be reduced?

A. Yes. We would keep within the legal limits.

Q. Now were you here during the entire trial of this case yesterday?

A. I was.

Q. Did you hear the witnesses of the Petitioner testify?

A. Yes, I did.

Q. Would the witnesses of the Petitioner have been able to get a permit to haul loads of gasoline, fuel oil, and chemicals whose gross weight exceeded 45,000 pounds in 1951?

Mr. Sarnet: I must object to that question. I think the only thing this witness can testify to is whether he would have issued a permit. This statute which is before Your Honor, I mean, specifies what the

permission is in Pennsylvania with (135) respect to issuing permits.

The Court: You may ask this witness what he did and what the practice of the office was in which he was employed and about which he has personal knowledge.

Mr. Armstrong: All right.

By Mr. Armstrong:

Q. Mr. Forsyth, would you have granted such a permit?

A. I would not.

Q. To your knowledge, was it the practice of the state to grant such a permit?

Mr. Sarnier: Your Honor, as to—

Mr. Armstrong: Now he has testified as to what the policy of the state was, the policy of the state to grant permits in such instances.

Mr. Sarnier: I think this court has limited the questioning to what the practice of Mr. Forsyth's office was.

The Court: I think you better put the question to him in terms of what his office did in the matter that was within his own personal knowledge.

By Mr. Armstrong:

Q. Your office was bound by the laws of the State of Pennsylvania and you were operating under the laws of the State of Pennsylvania, is that right?

A. That is right.

Q. Was it the practice of your office to grant permits in 1951 (136) to allow vehicles whose gross weight exceeded 45,000 pounds to use the highways?

A. No, not for the type of loads discussed yesterday.

Q. That is what I mean. Now would you explain, Mr. Forsyth, what special hauling permits or for what purpose special hauling permits were granted?

A. Well, most of our special hauling permits are granted for overlength, overwidth, and overheight loads.

but we do grant permits for loads in excess of 45,000 pounds gross because a lot of the equipment that is very large cannot be reduced to within the legal limits. So therefore we have the authority to issue permits covering that load. Now one permit is good for one movement only over roads stipulated by them. If we approve the load, we will therefore give them a permit for that movement.

Q. Did you say that you considered a load of gasoline a built-up load?

A. Yes, sir.

Q. Was it your testimony, sir, that you would not grant permits; that it was not your purpose to grant permits for excessive built-up loads?

A. That is correct.

Q. How long did it take one to get a permit in 1954?

A. If a person applies for a permit, we have a regular form that has to be filled out to apply for that permit. If that form is filled out and there is no one ahead of that person, (137) they can have that anywhere from three to five minutes.

Q. Can the application be over the telephone?

A. It can.

Q. But the permit has to be picked up physically by the person applying for it?

A. They can pick it up the same day they apply for it, or we can take it by telephone and mail it to them.

Mr. Armstrong: You may inquire.

CROSS-EXAMINATION.

By Mr. Sarnier:

Q. Mr. Forsyth, you say you operated your office in accordance with the statute of Pennsylvania, as I understood it.

A. Yes, sir.

Q. And you also just said that if someone called up on the phone they could get a permit by coming for it.

A. If someone called up on the phone and gave us the necessary information, we would have it typed up.

Q. And you could mail it to them?

A. Yes, sir.

Q. You are familiar with the statute, are you? Is this the statutory provision, Section 905, of the Vehicle Code of 1929 to which you refer?

(A document was handed to the witness.)

Q. You are familiar with that provision, are you?

A. Yes, I am.

(138) Q. Is that the one to which you refer?

A. That is the one, I believe Section 902, which also says that any load that can be part of a load taken off there must be taken off—

Q. That is not so, you say that is not so?

Mr. Armstrong: I object to counsel arguing with the witness.

• Mr. Sarnier: He referred to a particular section.

Mr. Armstrong: Mr. Sarnier has not shown the witness a copy of Section 902. He is showing him certain sections, but it does not include Section 902.

The Witness: I think it is 902.

By Mr. Sarnier:

Q. Is this the section to which permits for excessive size and weights refers, which reads—

The Court: Is that Section 905 you are reading?

Mr. Sarnier: Yes. "The Secretary of Highways of this Commonwealth, and local authorities in their respective jurisdiction, may, in their discretion, upon application in writing accompanied by the fee provided in this Act, and good cause being shown therefor, issue a special permit, in writing—"

By Mr. Sarner:

Q. Now, isn't it true, Mr. Forsyth, that it was not possible to call on the phone and get a permit?

A. You say it was?

(139) Q. It was not.

A. Yes, we take telephone calls. We will fill out the information for them, which we are allowed to do.

Q. And just on the mere telephone call you would issue the special permit without receiving the fee?

A. They generally pick them up.

Q. Generally, but you said you also mailed it to them at times.

A. That is correct.

Q. Without the fee being paid?

A. The fee is mailed in to us the same day. We tell them how much the fee is and they will mail us a check or money order.

The Court: But you said you would not have granted any permits in cases where the loads were liquid fuels where the load could have been reduced.

The Witness: That is correct. They are what we call a built-up load. Say, for instance, a man wanted to move steel plates and our gross load was 45,000 pounds and he wanted to move a gross load of 65,000 pounds. We would not grant him that permit for that excessive weight because he can take that off and still stay within the limits. On the excessive weight permits they are for large shovels, although we do require them to remove any part of that equipment they can to keep down as close as possible to the limits.

The Court: But it was not your practice to do that (140) for the loads which consisted of liquid fuels?

The Witness: That is right.

By Mr. Sarnier:

Q. Mr. Forsyth, are you familiar with the carriage of certain chemicals by motor trucks such as sulfuric acid?

A. No, sir, I am not.

Q. Would you know whether sulfuric acid is a very heavy chemical?

A. No, I don't know that.

Q. Have any applications been made to your office with respect to the carriage of sulfuric acid in excessive weight?

A. Not to my knowledge.

Q. You would know?

A. I don't recall having one.

Q. Suppose you were told that sulfuric acid was a very volatile liquid and that it was necessary that it be filled to capacity in a tank semi-trailer and also that the sulfuric acid was very heavy in weight and that the maximum load would be in excess of the 45,000 pounds plus the five per cent leeway allowed by the Pennsylvania statute in 1951. Would you have granted the permit under those circumstances?

Mr. Armstrong: I object to that question. This witness has stated that no such applications were made. I cannot see that it makes any difference at all what he would have done. The point is, no applications were made and he issued no permits.

(141) Mr. Sarnier: Well, he is discussing more the question of the operations of his office. I just—

Mr. Armstrong: This is purely speculation, Your Honor.

The Court: Much of the testimony that has been obtained from this witness on direct as well as on cross has been of a similar speculative character revolving around the practice of this man's office, and I think this question comes within that range. He may answer.

The Witness: What I would do then, I would not issue the permit until he referred all the information to our regional office at Harrisburg.

By Mr. Sarnier:

Q. That would take more than two or three minutes.

A. Oh, yes. It depends whether you can get hold of a person in charge. It might be a half hour, an hour, or half a day.

Q. Might be three days?

A. No, we would have the answer the same day.

Mr. Sarnier: All right. No further questions.

Mr. Armstrong: No further questions.

(144) Mr. Sarnier: Yes. With respect to the closing of the hearing, you may recall in my opening statement I pointed out that neither the petition nor the deficiency notice referred to the fines paid to various states other than Pennsylvania and that it might therefore be appropriate to amend the petition to accord with the stipulation of facts shown in the other states. I would prefer that it could be done without a submission of a new written amended petition, but if that is necessary I will be only too pleased to do so. I would move to have the petition amended to conform to the evidence which was introduced by the testimony relating to the fines paid to states other than Pennsylvania.

The Court: Well, as far as the other states are (145) concerned, I would not regard the existing pleadings as tying my hands, and I would take into account in that respect the stipulation of facts and the evidence developed which relates to the stipulation of facts.

Mr. Sarnier: Under those circumstances I see no need to file a written amended petition.

Mr. Sarner: With respect to the previous motion which I made to allow me to introduce another witness out of turn, I would like to have noted that this witness is an expert in the engineering features of the equipment used by the carriers. He would testify that in his opinion the equipment which was in use and in operation in 1951 by the carriers, such as the taxpayer, carrying loads up to the 60,000 pounds allowed by the adjoining states, but carrying such a load in Pennsylvania would not cause any original damage to the roads; that the equipment was so engineered that it would not be an obstacle to the free movement of traffic on the highways of Pennsylvania whether it carried (146) loads of approximately 60,000 pounds or within the 45,000 pounds specified in the Pennsylvania statute.

Respectfully, I think that this matter can be demonstrated by the fact which is already in the record, that the adjoining states did allow a maximum weight of the approximate 60,000 pounds and that the same equipment used in operating in Pennsylvania was used in operating in these states; and further, that the Pennsylvania Legislature in 1955 recognized that possibly the earlier statutory maximum may have been somewhat antiquated in lieu of the more universal acceptance of the 60,000 pound weight by the other states.

Therefore, I think that it will not be necessary to call this witness. I would like to announce that I will not do so and that the Petitioner's case is closed.

The Court: Very well: The case is submitted.

DEPT. OF LAW AND PUBLIC SAFETY, DIVISION OF STATE POLICE
CHAS. H. SCHOEFFEL, Superintendent

No 89780

MUNICIPAL COURT

of WESTVILLE, N.J.

STATE OF NEW JERSEY
COUNTY OF ~~BERKELEY~~ **LANCASTER**

SUMMONS

YOU ARE HEREBY SUMMONED TO APPEAR PERSONALLY BEFORE THIS COURT TO
ANSWER FOR THE FOLLOWING OFFENSE:

ON THE **20** DAY OF **FEBRUARY**, 19**51**, AT **11:30 A.M.**

(NAME) **TANK TRUCK RENTALS INC.**

(STREET) **LANCASTER RD #1**

(CITY-STATE) **LANCASTER COUNTY, PA**

(DRIVER'S LIC. NO.) ~~XXXXXXXXXX~~ DID UNLAWFULLY (RACE) (OPERATE)

MOTOR VEHICLE (REG. NO.) **Y-630-L PA**

MAKE **BROWNING** BODY TYPE **TRUCK** COLOR **RED**

UPON A PUBLIC HIGHWAY, NAMELY AT (LOCATION)

ROUTE #44

AND DID THEN AND THERE COMMIT THE FOLLOWING OFFENSE **39:5-843**

SPEEDING (over limit) ☒ 5-10 m.p.h. ☐ 11-15 m.p.h. ☐ over 15 m.p.h.
(m.p.h. in m.p.h. zone)

IMPROPER TURN: ☐ No signal ☐ Cut corner ☐ From wrong lane
☐ Into wrong lane

DISOBEY OF TRAFFIC SIGNAL ☐ Slow sign ☐ Stop sign ☐ Red light

IMPROPER PASSING: ☐ At intersection ☐ Cut in ☐ Wrong side

CARELESS DRIVING: ☐ Following too closely ☐ Wrong side
☐ Right of way

RECKLESS DRIVING: ☐

DISOBEY OF TRAFFIC SIGNAL ☐ Slow sign ☐ Stop sign ☐ Red light

IMPROPER PASSING: ☐ At intersection ☐ Cut in ☐ Wrong side

CARELESS DRIVING: ☐ Following too closely ☐ Wrong side
☐ Right of way

RECKLESS DRIVING: ☐

PARKING: ☐ Overtime ☐ Prohibited area ☐ Double parking
☐ Other parking violation (describe)

OTHER VIOLATIONS (describe) **REG. WT. 45,000 LBS.**
GR. WT. 50,110 LBS. GV. WT. 5,110

		CONDITIONS		INFORMATION
<input checked="" type="checkbox"/> Clear	<input type="checkbox"/> Dawn	<input type="checkbox"/> Light traffic	<input type="checkbox"/> School zone	Birth date: <u> </u>
<input type="checkbox"/> Rain	<input checked="" type="checkbox"/> Day	<input checked="" type="checkbox"/> Heavy traffic	<input checked="" type="checkbox"/> Residential	Birthplace: <u> </u>
<input type="checkbox"/> Snow		<input type="checkbox"/> Personal injury	<input type="checkbox"/> Business	Sex: <u> </u>
<input type="checkbox"/> Ice	<input type="checkbox"/> Dusk	<input type="checkbox"/> Property damage	<input type="checkbox"/> Other	Height: <u> </u> ft. <u> </u> in.
<input type="checkbox"/> Fog	<input type="checkbox"/> Night	<input type="checkbox"/> Almost caused accident		Weight: <u> </u> lbs.
				Occupation: <u> </u>

YOU ARE NOTIFIED THAT THE OFFICER WHOSE SIGNATURE APPEARS BELOW WILL
FILE A SWORN COMPLAINT IN THIS COURT CHARGING YOU WITH THE OFFENSE SET
FORTH ABOVE.

John C. L. Thomas #911
(Signature and Identification of officer)

NOTICE TO VIOLATOR: READ THE BACK OF THIS SUMMONS CAREFULLY. BRING
SUMMONS WITH YOU.

COURT APPEARANCE **6** DAY OF **MARCH**, 19**51**, AT **8:30** A.M.

ADDRESS OF COURT **CORO. HALL, WESTVILLE, NJ**

Exhibit 9

113a

from carrying legal loads in Pennsylvania. Nor could the industry as a whole have increased its rates so as to enable it to operate vehicles profitably while complying with Pennsylvania law, without losing the business to the railroads and to the private refineries operating their own motor vehicle equipment.

Aside from the competitive disadvantage and the loss of revenue, neither petitioner nor the other carriers operated their equipment with less than maximum capacity of liquid in their tanks, except on rare occasions, by reason of the unsafe and hazardous condition which the surge in such partially loaded tanks created in stopping the motor vehicles and in negotiating the equipment around the curves of the highways. Some of the tanks of petitioner and of the industry were divided into three compartments. None of these multiple compartment tanks was engineered during World War II, and petitioner had only twenty of them in 1951. It was possible to avoid the road hazard of a partially loaded tank by filling two of the compartments to capacity and leaving the third empty. However, it was not feasible from the point of view of revenue to operate the equipment at two-third capacity. Moreover, in so far as the transportation of domestic fuel and Bunker C oils resulted in the equipment being overloaded under the Pennsylvania statute, such oils could only be carried in single and not in multiple compartment tanks.

During the taxable year, it was possible to purchase semi-trailer tanks having a capacity less than the 4,500 gallons minimum tank then in current operation by petitioner and the industry. However, it would not have been economical for petitioner to have scrapped its entire fleet of existing tanks and to have purchased smaller equipment which could have transported full loads at legal weights within the state of Pennsylvania. To have done this, while the other carriers continued to operate their existing equipment filled to capacity, would have put petitioner at a com-

OPINION OF THE TAX COURT.

The respondent determined a deficiency in income tax of petitioner for the year 1951 in the amount of \$12,172.34.

The principal issue is whether fines paid by petitioner in 1951 for violating motor vehicle weight limitation laws of certain states are deductible as ordinary and necessary business expenses under the provisions of Section 23(a)(1)(A) of the Internal Revenue Code of 1939.

FINDINGS OF FACT.

A portion of the facts have been stipulated and are found accordingly.

The petitioner is a corporation duly organized on January 1, 1945 and existing under the laws of the State of Pennsylvania. It kept its books and filed its income tax return for the taxable year 1951 on a calendar year basis and on an accrual method of accounting.

The petitioner was during the taxable year 1951 engaged in the business of transporting bulk liquids by motor vehicles under lease or rental agreements with motor carriers holding operating certificates issued by the Interstate Commerce Commission and/or the Public Utility Commissions of the various states in and through which petitioner transported bulk liquids. Petitioner leased to the certificated carriers its motor vehicles and furnished the driver-operator of same as petitioner's employee.

During the taxable year, petitioner leased its equipment and supplied its own driver-operator for the following certificated motor carriers of bulk liquids: Coastal Tank Lines; Chemical Tank Lines; Lehman Transportation Company; Petroleum Transport, Inc.; Northland Petroleum Transport Company, and E. Brooke Matlack, Inc.

Petitioner and the carriers for whom it transported the bulk liquids were engaged in "over-the-road" transporta-

tion, which in the industry means the transportation of liquid commodities between towns or cities, but not solely within a municipality. Petitioner and its lessees transported a substantial portion of the bulk liquids carried over-the-road by all motor carriers in the states in and through which petitioner operated during the taxable year.

During the taxable year, petitioner operated its motor vehicles in the following states for the following approximate distances and made the following approximate number of trips:

<i>State</i>	<i>No. of Miles</i>	<i>No. of Trips</i>
Pennsylvania	6,110,798	77,385
Ohio	971,643	5,293
New Jersey	856,973	14,146
Delaware	383,612	2,984
Maryland	314,960	10,712
West Virginia	238,750	3,937
Totals	8,956,738	114,457

Petitioner and its lessees operated their vehicles in the transportation of bulk liquids both wholly within and between the aforementioned states. On approximately all of petitioner's trips, either the transportation took place wholly within Pennsylvania, or Pennsylvania was involved as the originating or destination state.

The motor vehicles used and operated by petitioner in the course of its business and leased during the taxable year consisted solely of truck tractor and semi-trailer tank combinations. Petitioner owned and operated 142 truck tractors, each of which had two axles, and 112 semi-trailers, of which 62 had a single axle and 50 had two axles.

The capacity of the tank on the single axle semi-trailers ranged from 4500 to 5000 gallons. The capacity of the tank on the two or tandem axle semi-trailers ranged from 4600 to 5900 gallons.

Petitioner's equipment in 1951 was substantially the same as that used and operated in the industry generally. The bulk of the semi-trailer fleet of the other carriers contained tanks with a capacity ranging from 4500 to 5000 gallons, although some carriers had a small percentage of tanks, 10 per cent or less of their entire fleet, with a capacity of 4000 gallons acquired mainly prior to the outbreak of World War II. During World War II, only tanks with a capacity between 4500 and 5000 gallons were available for purchase because of war restrictions on manufacture.

The unloaded weight of the truck-tractors owned and used by petitioner and the industry generally was approximately 12,000 pounds, and the unloaded weights of the single and tandem axle semi-trailer tanks were approximately 8,000 and 10,000 pounds respectively. The unloaded weight of the combination accordingly ranged between 20,000 pounds and 22,000 pounds.

The bulk liquids which petitioner and the industry commonly carried and their approximate weights were as follows:

Gasoline	6 lbs. a gallon
Kerosene	6 $\frac{3}{4}$ lbs. a gallon
Domestic Fuel Oil	7 lbs. a gallon
Bunker C Oil	8 lbs. a gallon

Prior to and during the taxable year, each of the aforementioned states prescribed by statute the maximum weight for motor vehicles using the public highways of the respective states. The statutory maximum gross weight for the truck tractor and semi-trailer combination owned, used and operated by petitioner was, for each of these states in 1951, as follows:

State	Statutory Citation	Maximum Gross Weight
Pennsylvania	75 P.S. § 453(g)	45,000 lbs.
New Jersey	N.J.S.A. § 39.3-84	60,000 lbs.
Ohio	Page's Ohio Gen. Code Anno. § 7246	Statutory formula which results in range from 57,000 to 67,600 lbs.
Delaware	Del. Code Anno. Title 21, Chapter 45, § 4503	48,000 lbs. for single axle trailers; 60,000 lbs. for tandem axle trailers
West Virginia	1951 Supp. to West Va. Code of 1949 Anno. § 1721. (463)	Statutory formula which results in range from 54,000 to 60,800 lbs.
Maryland	Flack's 1951 Anno. Code of Maryland § 278, Art. 66½	Statutory formula which results in gross weight of 65,000 lbs.

In the conduct of its business, petitioner would receive instructions from the certificated carriers to whom it leased its equipment to pick up and transport the bulk liquid from one point to another. Although the amount of liquid which was loaded into petitioner's semi-trailer tanks was supervised by loaders employed by the source furnishing the product, it was the practice of petitioner, pursuant to orders from petitioner's management, that all tanks be loaded to maximum capacity consistent with a small 3 per cent tolerance for expansion.

In 1951, it was the common and widespread practice of the petitioner and other over-the-road bulk liquid carriers by motor vehicle, operating in Pennsylvania and the other States herein involved, to fill semi-trailer tanks to capacity with bulk liquid.

During the taxable year, petitioner incurred and paid sums characterized by the laws of the aforesaid states as fines in the total amount of \$37,965 for operating on the highways motor vehicles in violation of state statutes prescribing weights of motor vehicles. Of this \$37,965, the sum of \$35,165 constituted fines imposed for exceeding the maximum weights prescribed by the statute of the state in which the fine was imposed. The balance, or \$2,800 of the sum of \$37,965, constituted fines imposed on petitioner by New Jersey for operating in New Jersey a vehicle which exceeded the maximum gross weight prescribed by the Pennsylvania statute, but did not exceed the 60,000 pounds gross weight otherwise prescribed by the New Jersey statute. Such New Jersey fines were imposed with respect to Pennsylvania vehicles operating in New Jersey, in accordance with the reciprocity provisions of New Jersey law which made applicable the Pennsylvania weight limitation to Pennsylvania vehicles on New Jersey roads.

The following table shows with respect to the taxable year involved the number and dollar amounts of fines and costs paid by petitioner to each of the states involved:

State	Number of Fines	Dollar Amt. of Fines	Dollar Amt. of Costs	Total
<i>Pennsylvania</i>				
at \$50. each	645	\$32,450.00	\$2,709.40	\$35,159.40
at \$25. each	62	1,550.00	226.75	1,776.75
<i>New Jersey</i>	7	2,800.00	30.00	2,830.00
<i>Maryland</i>	7	410.00	29.91	439.91
<i>Ohio</i>	9	405.00	51.10	456.10
<i>West Virginia</i>	10	320.00	39.68	359.68
<i>Delaware</i>	2	30.00	9.00	39.00
	746	\$37,965.00	\$3,095.84	\$41,060.84

Petitioner's vehicles made approximately 77,385 trips during the taxable year in and through Pennsylvania. During the summer months in the state of Pennsylvania, petitioner's vehicles carried a weight in excess of the maximum gross weight prescribed by the statute on approximately 60 per cent of the trips, and during the winter months, petitioner's vehicles were overweight in Pennsylvania on approximately 75 per cent of the trips. With petitioner's maximum 4500 gallon tank filled to capacity, petitioner was able to carry only gasoline weighing 6 lbs. a gallon, or a gross product weight of some 27,000 lbs., and be within the legal weight limitations of 45,000 lbs., plus the 5 per cent leeway allowed by the Pennsylvania statute for equipment and product. During the summer months, petitioner carried gasoline on approximately 40 per cent of its trips. However, during the winter months, gasoline consumption by the public was reduced and the carriage of domestic fuel and Bunker C oils constituted an increased portion of petitioner's business. Petitioner's vehicles, when filled to capacity with domestic fuel or Bunker C oils, weight 7 and 8 pounds a gallon respectively, carried at least a product gross weight ranging from 31,500 pounds to 36,000 pounds, which, together with the unloaded weight of equipment of at least 20,000 pounds, exceeded the Pennsylvania maximum gross weight.

Petitioner knew, at the time its vehicles were overloaded in the state of Pennsylvania, that it was operating vehicles which exceeded the Pennsylvania maximum gross weight requirements, and this knowledge pertained to the 711 times for which petitioner was fined. On many of the other trips, however, petitioner's vehicles were not stopped by the police and weighed and consequently petitioner was not fined.

Petitioner was taking a calculated risk that its overweight vehicles would not be discovered on a percentage of the times that its vehicles exceeded the Pennsylvania weight limitations.

All the violations for which petitioner paid fines in Pennsylvania and all the times that petitioner knew its equipment was being operated overloaded in Pennsylvania, pertained to exceeding the Pennsylvania 45,000 pound maximum gross weight plus the 5 per cent leeway. Pennsylvania and the other states herein involved also prescribed by statute limitations on the axle weight per vehicle. However unlike a dry freight motor carrier, where the load can shift to or be built up disproportionately over one axle, the bulk liquid equipment is so engineered that the liquid load is a constant weight over each axle. Hence, on only rare occasions would a bulk liquid motor carrier, carrying a permissive maximum gross weight, be in violation of an axle weight requirement as where a particular truck tractor would not combine properly with a particular semi-trailer tank.

Petitioner did not knowingly operate its vehicle in New Jersey carrying a weight in excess of the 60,000 pounds maximum gross weight prescribed by the New Jersey statute for motor vehicles bearing New Jersey license tag registration. However, under the reciprocity provision of the New Jersey statute, a motor vehicle registered in another state, such as Pennsylvania, was restricted in its gross weight, in using the New Jersey highways to the maximum gross weight allowed by the state where the vehicle is registered. Hence petitioner's Pennsylvania licensed motor vehicles were restricted in operating on the New Jersey highways to the Pennsylvania maximum gross weight of 45,000 pounds, plus the 5 per cent leeway, whereas the same equipment bearing a New Jersey license tag registration was allowed to use the highways of New Jersey bearing a gross weight of 60,000 pounds.

Petitioner was fined a total of seven times by the New Jersey authorities for operating overweight equipment on the New Jersey highways and all of the fines per-

tained to carrying a weight on the New Jersey highways in excess of the 47,250 pounds allowed by Pennsylvania law but less than the 60,000 pounds allowed by New Jersey law. On these seven trips and on many other occasions petitioner knowingly operated and knew at the time that it was operating vehicles in New Jersey bearing a weight under the 60,000 pounds, but in excess of that allowed by the Pennsylvania statute. On the other occasions, however, petitioner's vehicles were not stopped by the police and consequently petitioner was not fined.

In the remaining states of Maryland, Ohio, West Virginia and Delaware, petitioner paid a total of twenty-eight fines for operating overloaded vehicles exceeding the maximum weights prescribed by the statute of the state in which the fine was imposed. Petitioner, at the time these twenty-eight trips took place, did not know that its vehicles were overloaded in any respect. Although it is possible that some of the petitioner's vehicles were overloaded in these states on trips other than the twenty-eight for which petitioner was fined, petitioner did not operate at any time any vehicles in these states with knowledge that the weight of the vehicle exceeded the maximum prescribed by law.

Petitioner's conscious and deliberate overloading was confined to Pennsylvania and to New Jersey in so far as the reciprocity provision of the New Jersey statute was applicable. In all the other states, any operation of overloaded equipment by petitioner, for which petitioner was either fined or not, was inadvertent and without knowledge of petitioner at the time of the trip.

Various factors could have caused and did cause petitioner's vehicles to exceed at times the maximum weight requirements of the various states without petitioner's fault or knowledge at the time of the trip; the principal factors were:

(a) The nature of the loading process, whereby employees of the shipper, in order to assure customers of the

shipper full measure at destination, filled the tanks, in order to take care of possible shrinkage in transit, beyond the maximum capacity consistent with the small 3 per cent tolerance for expansion;

(b) Changes in temperature during transit, whereby a vehicle, within legal weight limits at point of origin, could pick up snow and ice which would cling to the vehicle causing it to be overweight en route;

(c) Loading by gallonage, which was the common practice by reason of the fact only a few of the refineries where the load originated used scales, coupled with residual variations in the weight per gallon of the product, in some cases a variance of one pound per gallon, so that reliance on average weight, which was the only measure feasible, was not accurate; and

(d) Combination improperly of a particular truck tractor and semi-trailer tank, so as to cause an axle overload.

Petitioner's practice of knowingly exceeding the Pennsylvania weight limitations in the operation of its vehicles was not confined to the taxable year 1951, but existed prior thereto. At the time of petitioner's incorporation on January 1, 1945, only single compartment tanks of no less than 4,500 gallon capacity were available due to World War II restrictions relating to the conservation of steel and the attempt to have a uniform standardized size of tank for maximum utility which would comply generally with the weight restrictions of most of the states of the United States. It had been the uniform practice in the industry during the war years to fill the tanks to capacity and this practice continued unabated for petitioner and the other carriers during the taxable year. Except where gasoline weighing approximately 6 pounds a gallon was carried, a full load of the other commonly transported bulk liquids resulted in a maximum gross weight of over 45,000 pounds.

plus the 5 per cent leeway, prescribed by the Pennsylvania statute, but normally under the 60,000 pounds approximately prescribed by the other states. Thus, the industry as a whole knew at the time it was operating its tanks filled to capacity on the Pennsylvania highways that the equipment was overweight except for the carriage of gasoline.

The revenue of petitioner, and of its lessees and of the industry generally operating their own equipment was predicated on rates based on the number of gallons transported per mile. Revenue for petitioner and the industry generally in 1951 was thus keyed to the uniform practice of filling the tanks to capacity. In order to have carried weights within the limitations of the Pennsylvania statute, petitioner would have had to reduce its revenue per gallon hauled, while operating costs would have increased because of the additional number of trips required, thus causing petitioner to operate at a loss. Petitioner could not have increased its rental charge to its lessees per gallon hauled to compensate for transporting a smaller number of gallons each trip, since the competitive practices in the industry were such that had petitioner demanded an increased rental from its lessees, while the industry generally was filling its tanks to capacity and exceeding the Pennsylvania weight limitations, petitioner would have forced itself out of business. The lessees would have referred the business to other lessors of equipment, or would have carried the liquid in their own fleet of vehicles.

Competition among themselves and with the railroads and private carriers of the refineries played a major part in the continuance of the practice by the over-the-road motor carriers of bulk liquids to key their rates to tanks filled to capacity and consciously to exceed the Pennsylvania weight limitations. So long as its competitors maintained the practice of carrying the minimum of 4,500 gallons on each trip and of paying the fines when the violations were discovered, no carrier could increase its rates to compensate for the reduction in operating revenue which would result

petitive disadvantage in so far as rates and revenue were concerned.

Although Pennsylvania was the focal point of petitioner's operations, the essence of petitioner's lease arrangements with the certificated carriers was the assurance that petitioner's fleet would be available at peak periods in other states and for interstate carriage, as well as in Pennsylvania. The equipment in the industry must be flexible in the sense it can economically be used generally throughout the states in which it is operated. The rate structure in the states neighboring Pennsylvania in and through which petitioner and the other carriers operated their vehicles was based on hauling maximum gallonage per trip consistent with the gross weight laws of approximately 60,000 pounds. Equipment of the size suitable for legal weight in Pennsylvania could not have been economically operated in the other states.

The Pennsylvania statute and the statutes of the other states herein involved have provisions for the obtaining of a permit for a fee from designated state authorities for the operation of motor vehicles on the highways of the respective states bearing a weight in excess of the maximum therein normally prescribed. The fee for such a permit in Pennsylvania is \$5.00 plus two cents per ton of 2,000 pounds overweight per mile. It was the policy of the State of Pennsylvania not to issue permits where material could be taken off the vehicle so as to reduce the gross weight thereof to 45,000 pounds.

The industry practice, followed by petitioner, was not to seek permits for operating the equipment in excess of the maximum prescribed by the Pennsylvania statute.

As a consequence of the practice to fill the tanks to capacity and operate equipment exceeding the maximum gross weight allowed by Pennsylvania law, petitioner and three of its lessees, during 1951, frequently had their vehicles stopped by the police and had to pay fines for operating the overloaded equipment in Pennsylvania.

They knowingly violated the Pennsylvania motor vehicle weight laws a substantial number of times in excess of the number of times their vehicles were stopped by the police and fined.

Fines for operation of overloaded equipment in the states involved herein, other than Pennsylvania, were infrequent because the approximate 60,000 pounds maximum gross weight assured capacity use of the standard equipment. The experience of the other carriers in the industry with respect to the operation of overloaded equipment in these other states was substantially the same as that of petitioner, namely, that with the exception of violations of the reciprocity provision of the New Jersey statute, only occasionally were they fined because their motor vehicles were overweight in these states, the carriers being unaware at the time that the vehicles were overweight.

The following table shows, with respect to the taxable year 1951, the number and dollar amount of fines imposed and paid in Pennsylvania as a result of the enforcement by the Pennsylvania State Police of the Pennsylvania statute prescribing maximum gross weight for motor vehicles:

No. of vehicles stopped and weighed	182,082
No. of Fines for vehicles over 5% and less than 10% overweight	7,875
Dollar amount of fines for vehicles over 5% and less than 10% overweight	\$196,875.00
No. of fines for vehicles over 10% overweight	20,540
Dollar amount of fines for vehicles over 10% overweight	\$1,027,000.00
Total No. of fines	28,415
Total dollar amount of fines	\$1,223,875.00

The above table does not reflect any enforcement activities by police of Pennsylvania municipalities or political sub-

divisions. The records of petitioner indicate that approximately 60 per cent of petitioner's violations, on which arrests were made, were enforced by the Pennsylvania State Police and the remaining 40 per cent by the police of the local Pennsylvania municipalities.

Pursuant to the provisions of the Pennsylvania statute for operating motor vehicles with a weight in excess of the maximum prescribed by law, notice of violation was sent to and the fine was imposed on the driver of the vehicle, petitioner's employee. Under the provisions of the statutes of the other states involved herein, the fine was imposed on petitioner as the owner of the overweight vehicle.

Petitioner had contracts in full force and effect during and prior to the taxable year with its driver-employees represented by A.F.L. unions under the terms of which petitioner was obligated to bear all costs in connection with the operation of overloaded equipment. In accordance with the contracts, petitioner paid in the taxable year all the fines imposed by the State of Pennsylvania on its driver-employees for operating the overloaded equipment. Several other trucking organizations also followed this practice.

Petitioner's drivers had the responsibility for and paid without reimbursement from petitioner, any fines imposed for parking, speeding or driving violations.

As between petitioner and its lessees, the fines incurred by petitioner's operation of vehicles in excess of the maximum weight prescribed by law were payable solely by petitioner and petitioner had no arrangement with its lessees that it was to be reimbursed for the payment of these fines or any part thereof.

None of petitioner's drivers was imprisoned or had his license suspended or was subjected to any sanction other than a fine for operating petitioner's vehicles overweight in Pennsylvania in 1951, and this was true for the employee-drivers of other carriers.

No sanctions were imposed by the State of Pennsylvania on petitioner or other carriers in 1951 for operating the overloaded equipment, other than by way of the fines imposed on the driver-employees. The Pennsylvania statute provides for removal of the excess load in the discretion of the enforcement authorities before the vehicles can continue en route. Petitioner was never required by the Pennsylvania authorities to remove any excess load before its overweight motor vehicle was permitted to continue on the Pennsylvania highways.

During the years of World War II and up to the latter part of 1950, petitioner's overweight vehicles were not stopped by the Pennsylvania authorities.

The Interstate Commerce Commission prescribes a uniform system of accounting in the keeping of books and records and in the preparation of reports required to be filed with it by motor carriers subject to its jurisdiction. The Pennsylvania Public Utility Commission follows, adopts and interprets accounting words and phrases and prescribes that annual reports which may be required to be submitted to it by motor carriers be prepared in accordance with the Uniform System of Accounts prescribed by the Interstate Commerce Commission.

Petitioner did not, during the taxable year 1951, hold any operating certificate issued by the Interstate Commerce Commission and/or by the Pennsylvania Public Utility Commission, and, accordingly, was not required to nor did it for the taxable year 1951, file any annual reports with either Commission.

It was the practice in 1951 of motor carriers required to keep books and records for, and to file reports with, the Interstate Commerce Commission and/or Pennsylvania Public Utility Commission to include fines for operating motor vehicles in excess of the weight prescribed by state law as an operating expense item in Account No. 4280 of the Uniform System of Accounts entitled "Other trans-

portation expenses" under the listed category "Fines for traffic violations".

Examination and review of the books, records and reports of motor carriers under its jurisdiction is periodically made by the Interstate Commerce Commission. No change or adjustment was made for the year 1951 or years prior thereto with respect to the reporting of the fines for violating the state weight laws in Account No. 4280.

A distinction is made in the Uniform System of Accounts between operating revenue and operating expense on the one hand, and other revenue and other expense; on the other hand. Items of operating expense are considered, and items of non-operating expense are not considered by the Interstate Commerce Commission for rate making purposes. Penalties and fines for violations of law, except fines for traffic violations, are reported as a non-operating expense item in Account No. 7500 of the Uniform System of Accounts.

On June 30, 1955, Act No. 70, amending the Pennsylvania Vehicle Code was enacted providing, inter alia, for the combination of truck tractor and semi-trailer motor vehicles used by the bulk liquid motor carrier industry, a maximum gross weight of 50,000 pounds for the single axle semi-trailers and of 60,000 pounds for the tandem axle semi-trailer, effective on date of enactment.

In most instances, in the taxable year, the gross weight of each of petitioner's vehicles using the Pennsylvania highways was less than 60,000 pounds.

Petitioner filed with the collector of internal revenue for the first district of Pennsylvania a U. S. Corporation Income Tax Return for the calendar year 1951. Included in the item of "Transportation Expense" in Schedule B—Cost of Operations in the amount of \$593,066.08, was the amount of \$41,060.84, representing fines and costs paid by petitioner for violating state motor vehicle weight laws. The respondent determined that the \$41,060.84 did not constitute a deductible expense.

OPINION.

RAUM, *Judge*: 1. Petitioner seeks to deduct under Section 23(a)(1) of the Internal Revenue Code of 1939 the fines and costs paid by it in 1951 for operating motor vehicles in violation of state weight limitation laws. Its principal contention is that such payments constituted ordinary and necessary business expenses. Since most of the violations occurred in Pennsylvania, we shall consider that contention first in relation to the fines paid to that state.

Pennsylvania had lower weight limits than the other states, and petitioner's vehicles when fully loaded with liquids other than gasoline were in excess of the legal limit in Pennsylvania. Nevertheless, petitioner as well as other carriers in Pennsylvania consistently and deliberately loaded their vehicles so as to exceed the permissible limit. The carriers might have applied for permits, upon payment of a fee, to exceed the legal limit, but the procedure was somewhat cumbersome, and it was highly doubtful whether such permits would have been granted. Moreover, the fees required for such permits were not insubstantial, and the evidence suggests that in view of the comparatively small percentage of cases in which violations were detected, it was thought to be more advantageous to take the risk and pay the fine. The violations were conscious and deliberate; they represented a calculated risk taken by the petitioner and other carriers.

True, the violations were widespread and common, and the evidence also disclosed that unless petitioner did engage in such practices it would have been at a competitive disadvantage in the operation of its business. Yet, these considerations do not justify the deduction in the light of the decisions in this field.

It has long been recognized that the payment of fines or similar penalties is not deductible as an ordinary and necessary business expense. See, e.g., *Commissioner v. Longhorn Portland Cement Co.*, 148 F. 2d 276 (C. A. 5), cer-

tiorari denied, 326 U. S. 728; *Helvering v. Superior Wines & Liquors*, 134 F. 2d 373, 376 (C. A. 8); *Burroughs Building Material Co. v. Commissioner*, 47 F. 2d 178 (C. A. 2); *Great Northern Ry. Co. v. Commissioner*, 40 F. 2d 372 (C. A. 8); *William F. Davis, Jr.*, 17 T. C. 549; *Davenshire, Inc.*, 12 T. C. 958; *Bonnie Bros., Inc.*, 15 B. T. A. 1231, 1236. Cf. *Commissioner v. Heininger*, 320 U. S. 467, 473; *Lilly v. Commissioner*, 343 U. S. 90.

The laws of Pennsylvania, in effect in 1951, expressly prohibited the operation on its highways of vehicles whose gross weights exceed certain fixed amounts and provided that operators of overweight vehicles should, upon conviction, pay specified fines and costs of prosecution, and in default of payment thereof, should undergo imprisonment for not more than five days in cases where the vehicle did not exceed by more than ten per centum the maximum weight allowed, and for not more than ten days where the vehicle did exceed by more than ten per centum the maximum weight allowed. Vehicle Code of Pennsylvania, Act of May 1, 1929, P. L. 905, Section 903, as amended; 75 P. S. § 453. The purpose of these laws was to protect the highways and bridges from damage and to insure the safety of persons traveling over them. *McDonald v. Pennsylvania R. Co.*, 210 F. 2d 524, 528 (C. A. 3); *W. J. Dillner Transfer Co. v. Messner*, 371 Pa. 356, 359, 89 A. 2d 516, 518; *Commonwealth v. Burall*, 146 Pa. Super. 525, 529, 22 A. 2d 619, 622. They were not remedial laws having as their purpose the recovery of damage to the highways or bridges even though, as petitioner points out in its brief, they provided that the fines and penalties collected be used for the construction, repair and maintenance of highways. Vehicle Code of Pennsylvania, *supra*, Section 1207, as amended; 75 P. S. § 737. They were "penal" laws, *Commonwealth v. Burall, supra*, 126 Pa. Super. at p. 529, 22 A. 2d at page 622, and were enacted to enforce obedience to prescribed weight limitations and to punish violators.

Under contracts entered into with its driver-employees, petitioner was obligated to bear all costs in connection with violations of laws of Pennsylvania against operating overloaded vehicles when its drivers were required to operate such equipment. Pursuant to these agreements it paid fines and costs to the State of Pennsylvania in the year 1951 in the amount of \$36,936.15. Inasmuch as they were criminal penalties imposed for violations of state laws, their allowance as deductions would have the effect of mitigating the degree of punishment and of frustrating the purpose and effectiveness of those laws. On the authority of cases heretofore cited, we hold they are not deductible.

A unique situation is presented as to the seven fines and costs aggregating \$2,830 paid to New Jersey. The New Jersey limit was 60,000 pounds, but its law had a reciprocity provision whereby a vehicle registered in Pennsylvania had to comply with the stricter Pennsylvania requirements. Accordingly, although petitioner's vehicles, in these seven instances, were under the 60,000 pound limit otherwise permissible in New Jersey, they were in excess of the 45,000 pound limit (plus the five per cent leeway) permitted under Pennsylvania law, and therefore were in violation of New Jersey law. For reasons best known to itself, New Jersey has undertaken to accommodate its penal provisions to those of Pennsylvania in these circumstances, and it made it a criminal offense to operate Pennsylvania vehicles on its roads which exceeded the lower Pennsylvania limits. These violations were just as deliberate as the ones occurring in Pennsylvania itself, and the fines and costs are similarly not deductible.

There remain for consideration the fines paid by petitioner for overweight violations of the laws of Maryland, Ohio, West Virginia and Delaware. Petitioner urges that the allowance of these fines as deductions would not frustrate any sharply defined policy of the laws of those states because they were common to the industry as a whole and were innocent, non-negligent, and not the result of failure

to take practicable precautions. In support of this contention the petitioner relies upon *Jerry Rossman Corporation v. Commissioner*, 175 F. 2d 711 (C. A. 2), and related cases in which it was held that civil penalties for overcharges under the Emergency Price Control Act which were neither wilful nor the result of failure to take practical precautions were deductible as ordinary and necessary business expenses. See also *National Brass Works v. Commissioner*, 182 F. 2d 526 (C. A. 9); *Commissioner v. Pacific Mills*, 207 F. 2d 177 (C. A. 1). The applicability of such cases to situations such as the one before us was considered by the United States District Court for the Middle District of Tennessee in *Hoover Motor Express Co., Inc. v. United States*, 135 F. Supp. 818. In holding that fines paid for violations of state laws prescribing maximum weight limitations were not deductible as ordinary and necessary business expenses, the court said (pp. 820, 822):

In the view which the Court takes of the case, it is not necessary to determine whether the plaintiff did all which should reasonably be required of it as a prudent operator to comply with the weight limitations involved. Assuming that it took every precaution that could fairly be demanded consistent with a practical operation of its business, and assuming further that it did not act with wilful intent, the Court is of the opinion that to allow the claimed deductions from gross income for the taxable years would nevertheless frustrate the clearly defined policies of the applicable state weight limitation laws.

There can be no doubt that the underlying policy of the laws under which the fines were paid is not only to protect the highways of the state but also to protect the persons using them. Violations of the statutes are punishable by the imposition of a fine which is penal in character. No distinction is made in the statutes between an innocent or non-negligent violation, on the

one hand, and one which is either wilful or due to a negligent failure to take adequate precautions, on the other hand. It was evidently considered that the purposes of the statutes could be accomplished more effectively by treating all violators alike. This thought is borne out by the provisions commonly found in statutes of this character that the Commissioner of Highways, or other proper authority, shall have discretionary power to grant special permits for freight movements in excess of the prescribed weight limitations, the inference being that, in the absence of such special permit, neither hardship nor good faith shall constitute a defense to a violation.

* * *

* * * in the OPA cases there was statutory authority for a distinction between innocent and wilful violators, and since the Act itself made the distinction, it was possible to find that the allowance of an innocent and non-negligent overcharge as a deduction would not in any way impair or frustrate the policy of the Act. But the policy of the state weight limitation laws under consideration is to place all violators on the same basis without recognition of degrees or character or guilt. This being true, it would clearly frustrate the policy of the statutes if the distinction should be made by a court in applying the provisions of Section 23(a)(1)(A) of the Internal Revenue Code. To the extent that the deductions should be allowed because of innocence or due care the taxpayer would be relieved of the consequences of his violation, although the state law itself made no such distinction.

The District Court's opinion is an effective answer to the contentions of the petitioner, and we follow it here. We hold that the fines paid by it to the States of Maryland, Ohio, West Virginia and Delaware are not deductible as ordinary and necessary business expenses.

2. Petitioner makes an alternative contention, limited to the various fines and costs paid to Pennsylvania, where they were formally imposed upon the employee-driver of the overweight motor vehicle and not on the owner. Petitioner's contention is that such payments are deductible as reasonable compensation for services rendered. This argument is without merit. Under a contract with its drivers petitioner was obligated to bear all costs in connection with violations of laws against operating overloaded equipment whenever its drivers were required to operate such equipment. It required its drivers to operate overloaded equipment and fines imposed for violations of state laws thus became its responsibility and it paid the fines. These payments were clearly not made for the purpose of compensating drivers "for personal services actually rendered" and are not deductible as compensation paid under Section 23(a)(1)(A), *supra*.

Decision will be entered for the respondent.

DECISION.

Pursuant to the determination of the Court, as set forth in its Findings of Fact and Opinion, filed May 31, 1956, it is:

ORDERED AND DECIDED: That there is a deficiency in income tax of \$12,172.34 for the year 1951.

Entered: June 12, 1956

(Signed) ARNOLD RAUM,
Judge.

[fol. 139] IN UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12,060

TANK TRUCK RENTALS, INC., Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

ON PETITION FOR REVIEW OF THE DECISION OF THE TAX COURT
OF THE UNITED STATES

Argued January 25, 1957

Before Biggs, Chief Judge, and McLaughlin and Hastie,
Circuit Judges.

OPINION OF THE COURT—Filed March 6, 1957

By McLAUGHLIN, *Circuit Judge*.

Petitioner during the year 1951 was a motor carrier transporting bulk liquids. It supplied vehicles and driver-operators to various "over-the-road" carriers holding operating certificates from the Interstate Commerce Commission. During 1951, it paid fines totalling \$37,965.00 imposed [fol. 140] on its drivers for operating on the highways motor vehicles in violation of state statutes limiting weights of motor vehicles.¹ Most of the fines were paid in Pennsyl-

¹ The following table shows with respect to the taxable year involved the number and dollar amounts of fines and costs paid by taxpayer to each of the states involved:

State	Number of Fines	Dollar Amt of Fines	Dollar Amt of Costs	Total
Pennsylvania				
at \$50. each	649	\$32,450.00	\$2,709.40	\$35,159.40
at \$25. each	62	1,550.00	226.75	1,776.75
New Jersey	7	2,800.00	30.00	2,830.00
Maryland	7	410.00	29.91	439.91
Ohio	9	405.00	51.10	456.10
West Virginia	10	320.00	39.68	359.68
Delaware	2	30.00	9.00	39.00
	746	\$37,965.00	\$3,095.84	\$41,060.84

vania which had a particularly low maximum weight law at that time.² The New Jersey fines sought to enforce the Pennsylvania maximum weight provision through reciprocity provisions of the New Jersey statute. The fines paid in states other than Pennsylvania and New Jersey resulted from unintentional overloading.

As a matter of economic policy petitioner deemed it expedient to overload and run the risk of an occasional fine. The Tax Court found that it had been the general practice of the trucking industry to overload in Pennsylvania and chance the fines with the result that petitioner would have [fol. 141] been at a competitive disadvantage if it had attempted to conform to the law. In 1955, the Pennsylvania maximum load limits were raised substantially.³

The rule that certain expenditures otherwise ordinary and necessary under Section 23(a)(1)(A) of the Internal Revenue Code of 1939 are not deductible if their allowance would frustrate sharply defined national and state policies is of judicial origin. *Commissioner v. Heininger*, 320 U.S. 467 (1943).

In *Hoover Motor Express Co. v. United States*, 135 F. Supp. 818 (D.C.M.D. Tenn. 1955), affirmed January 4,

² The statutory maximum gross weight for the truck tractor and semi-trailer combination owned, used and operated by taxpayer was, for each of these states in 1951, as follows:

State	• Statutory Citation	Maximum Gross Weight
Pennsylvania	75 P.S. § 453(g)	45,000 lbs.
New Jersey	N.J.S.A. § 39.3-84	60,000 lbs.
Ohio	Page's Ohio Gen. Code Anno. § 7246	Statutory formula which results in range from 57,000 to 67,600 lbs.
Delaware	Del. Code Anno: Title 21, Chapter 45 § 4503	48,000 lbs. for single axle trailers; 60,000 lbs. for tandem axle trailers
West Virginia	1951 Supp. to West Va. Code of 1949 Anno. § 1721 (463)	Statutory formula which results in range from 54,000 to 60,800 lbs.
Maryland	Flack's 1951 Anno. Code of Maryland § 278, Art. 66½	Statutory formula which results in gross weight of 65,000 lbs.

³ Act #70 of June 30, 1955, amended the Pennsylvania Vehicle Code, 75 P.S. §§ 453, 454.

1956, 6 Cir., F.2d , the District Court made an exhaustive examination of the pertinent case law and held overloading fines were not deductible by a motor carrier. Petitioner seeks to distinguish the Hoover opinion on the grounds that: (1) there was a greater disparity in the Pennsylvania weight limitation and those of the adjoining states; (2) the economic factors are more compelling in this instance; and (3) the Pennsylvania enforcement policy was sporadic or discriminatory. These broad allegations add nothing substantial to petitioner's wholly untenable theory. Under it the federal court on a tax controversy would be required to examine not only the merits of particular criminal cases in the state courts, but indeed the wisdom of a state motor vehicle statute and the regularity of its enforcement. State legislatures are the determinative tribunals in those areas. Once it is concluded that the regulation is within the sphere of proper legislative action the courts will not gainsay the legislature on just where the arbitrary line between allowable and proscribed weights should be drawn. Nor is it appropriate at this juncture to review state enforcement policies. Such must be the rule if there is to be any semblance of order on this and similar questions. The weight limit law is not to be considered a mere [fol. 142] revenue measure, as petitioner suggests, simply because the fines collected are assigned to road repair. It has been held by this court that the disputed law is for the protection of the citizenry of Pennsylvania as well as the public roads. See *McDonald v. Pennsylvania R. Co.*, 210 F.2d 524 (3 Cir. 1954) involving a death claim arising in part from disregarding this statute regulating overweight vehicles.

Petitioner seeks to support its theory by *Jerry Rossman Corporation v. Commissioner*, 175 F.2d 711 (2 Cir. 1949), which allowed deductions of overcharges paid over to the government under the Emergency Price Control Act of 1942. See also *National Brass Works v. Commissioner*, 182 F.2d 526 (9 Cir. 1950); and *National Brass Works v. Commissioner*, 205 F.2d 104 (9 Cir. 1953). Those decisions turn on the legislative history of the price control statutes which indicated a distinction between wilful breach and

innocent mistake. That distinction does not exist in the governing motor vehicle law now before us, and even if it did petitioner's offenses in Pennsylvania and New Jersey were admittedly wilful. The transgressions in other states, though unintentional, were in disregard of the local laws. Further, the O.P.A. cases rely on the unusually complex regulatory scheme in the price control law, which problem does not confront a motor carrier with respect to weight limit restrictions. The O.P.A. penalty required merely that the unlawful income be paid over to the government. That purpose was not frustrated in a non-wilful case by relieving the taxpayer of the tax burden on the income so disgorged. As Judge Learned Hand wrote in *Rossman* (p. 713), "We think * * * in short that there are 'penalties' and 'penalties', and that some are deductible and some are not".

We hold it clear that the state statutes involved are as said in *Commissioner v. Heininger, supra*, the creation of "sharply defined state * * * policies"; that they are "state policies evidenced by some governmental declaration of them". *Lilly v. Commissioner*, 343 U.S. 90, 97 (1951). [fol. 143] The Court that fashioned those phrases could not have had in mind a more typical example than motor vehicle laws.

The decision of the Tax Court will be affirmed.

[fol. 144] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT

No. 12,060

TANK TRUCK RENTALS, INC., Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

ON PETITION TO REVIEW A DECISION OF THE TAX COURT
OF THE UNITED STATES

Present: Biggs, Chief Judge, and McLaughlin and Hastie,
Circuit Judges.

JUDGMENT--March 6, 1957

This cause came on to be heard on the record from the
Tax Court of the United States, and was argued by counsel.

On consideration whereof, it is now here ordered, ad-
judged and decreed by this Court that the decision of the
said Tax Court in this cause be, and the same is hereby
affirmed.

Attest:

Ida O. Creskoff, Clerk.

March 6, 1957

[fol. 147] Clerk's Certificate to foregoing transcript
omitted in printing.

[fol. 148] SUPREME COURT OF THE UNITED STATES

No. 932, October Term, 1956

[Title omitted]

ORDER ALLOWING CERTIORARI—June 17, 1957

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted. The case is consolidated with No. 862 and a total of two hours allowed for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.